

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1902

ORIGINAL

In The

United States Court of Appeals

For The Second Circuit

MARIA IANUZZI,

Plaintiff-Appellant,

vs.

SOUTH AFRICAN MARINE CORP.,

Defendant and Third Party Plaintiff-Appellee,

vs.

INTERNATIONAL TERMINAL OPERATION CO., INC.,

Third Party Defendant-Appellee-Appellant.

JOINT APPENDIX

Volume III, pp. 601a - 900a

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2 A Yes.

3 Q Did it work in the same way?

4 A It did.

5 Q Could you tell me, Mr. Napolitano, based on your
6 experience and your examination of this equipment, would the
7 presence of air in the transmitting system result in making
8 the control handle difficult to operate?

9 A I can't in any way, conceive that it would. No, it
10 would not.

11 Q Would the total absence, if you suffered a casualty
12 where you completely lost the hydraulic fluid from the trans-
13 mitter system, would the control handle be difficult to
14 operate?

15 A No, sir, it would be a lot easier.

16 Q Assuming that you did lose hydraulic fluid and
17 assuming you lost all the hydraulic fluid in the control
18 system, what effect, if any, would the friction coefficient
19 of the seals have on your ability to move that handle?

20 A They would have absolutely no effect because, firstly,
21 you are operating a ram, which is truly a piston and any seals
22 you have are within the oil path. Now, let us assume you
23 have lost the oil, but the friction which was mentioned as "O"
24 ring friction -- the "O" ring is a very tiny ring made of
25 neoprene. It has a friction coefficient of approximately .02,

1 rgrm 142

Napolitano-direct

2 which means that whatever force you are trying to rub against
3 it, it will have a friction force, or a resisting force of
4 approximately .02 of that pressure in which you are enclosing
5 it.

6 Q Would it be a fair statement to say, Mr. Napolitano,
7 that a completely primed system, that is one with no air in
8 it whatsoever, the handles are a little more difficult to
9 operate than a system with air in it?

10 A Yes. The words "difficult to operate" is inaccurate,
11 but, yes, it would have a greater resistance to movement.

12 Q Do you have a certain mechanical advantage in working
13 those control levers?

14 A Yes, indeed. You have the length of the handle,
15 which is approximately, as I recall, between 10 and 12
16 niches, I don't recall exactly now, and the actuator, or the
17 pinion would be approximately two niches, so that from the
18 point of fulcrum there would be just the one niche space and
19 the handle would be 10, so that you have an advantage there
20 of 10 to 1. If you applied, say, a 10 pound force with your
21 hand, you would have the equivalent of 100 pounds force on
22 the pinion.

23 Q Looking at that photograph, or that drawing which
24 is Plaintiff's Exhibit 15 in evidence, does that drawing --
25 first of all, do you understand the drawing as it is?

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Napolitano-direct

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1 A Yes, I do.

2 Q Does that drawing reflect the actual situation, the
3 actual type of linkage between the transmitter and the winch
4 motor at the forward end of No. 3 hatch of the South African
5 Huguenot?
6

7 A No, not that particular winch motor.

8 Q In what respect does it differ?

9 A Well, the lower part of that drawing there, which
10 is labeled "pilot valve" actually as it is in the field you
11 have another similar ram as you have on top operating a
12 similar handle -- and when I say top, I mean at the far end
13 of the system, at the receiving end of the system, and it is
14 this handle which would respond or correspond to the
15 transmitter handle and it would follow it, provided there was
16 nothing to keep it from doing so it would follow it and that
17 is all as far as the hydraulic tie is concerned with the
18 transmitting system.

19 Then there is a yoke, or a tie, a mechanical piece
20 of steel which connects that handle at the winch end of this
21 system to the handle which is called here -- in the language
22 that we have been using it is called the manual. There is
23 a linkage which, when flipped over, connects the handle of
24 the receiver on the transmitting system to the handle on the
25 manual and it is when that is flipped over that if you

1 rgrm 144

Napolitano-direct

2 operate the transmitter, since the receiver will follow it and
3 the other one, the manual is tied to it, the whole system
4 will work together.

5 Q Mr. Napolitano, I show you this photograph which is
6 Defendant's Exhibit C in evidence. Will you tell me whether
7 there are depicted on that photograph any of the manual levers
8 for the cargo winches at No. 3 hatch which you were just
9 describing?

10 A Yes. The best I can make out is right here I see
11 one.

12 Q Could you, maybe, circle them with the marking
13 pencil. Will you draw a circle around one or more of them,
14 or draw a circle around as many as you can see there.

15 MR. KAIN: May I show this to the jury, your Honor?

16 THE COURT: You may.

17 (Exhibit shown to jury.)

18 Q Mr. Napolitano, directing your attention to this
19 photograph, and specifically to the right upper corner where
20 you see those two lines. Will you assume with me that the
21 witness who testified before you indicated on this drawing
22 that he meant that to be a pocket or a bubble of air in that
23 transmittal system.

24 Could you tell me what the effect of such a pocket
25 or bubble of air in the transmittal system would be?

1 rgrm 145

Napolitano-direct

2 A Well, a pocket of air anyplace would give you what
3 I call a mushy system. That is as you are trying to move
4 something that you expect to have resistance to it, it will
5 sort of respond by just not being stiff. You experience it
6 on your automobile hydraulic valve -- brake system. That is
7 if you have air in the system or you don't have enough oil,
8 your foot will go down before it starts to grip and stop your
9 car.

10 Q Would such a pocket of air have any affect on the
11 synchronization between the master system or transmitter and
12 the cargo winch itself, the lever for the cargo winch?

13 A Yes, it could. It would, in fact. The synchro-
14 nization.

15 Q When you say it would affect it, does that mean that
16 they wouldn't move exactly together?

17 A They wouldn't move the same amount at the same time
18 together.

19 THE COURT: Mr. Napolitano, so we all understand
20 this, what you are saying is that you would have to move the
21 transmitting handle -- you would move the transmitting handle
22 a certain distance, but the manual handle would move a lesser
23 distance?

24 THE WITNESS: Yes. Or it might not respond.

25 THE COURT: Or it might not respond.

1 rgrm 146

Napolitano-direct

2 THE WITNESS: It would depend upon the force that
3 would be resisting the movement of the other handle.

4 THE COURT: Go ahead.

5 Q Assuming such a pocket of air, and assuming a draft
6 on a cargo hook, in this case a large automobile weighing
7 in the neighborhood of 4000, 4500 pounds, and assuming the
8 upper or the transmitting handle to be in the slow position,
9 that is to operate the winch slowly, would the presence of
10 such a pocket of air in your opinion omit the winch fall to
11 run away, in other words, to pay out very rapidly?

12 A No.

13 Q In your opinion, because of a pocket of air in this
14 upper portion, assuming it is there, could the speed of the
15 cargo winch at any time exceed the speed indicated by the
16 transmitter?

17 Do you understand the question?

18 A I think it would be well to understand the valving
19 before you can say that, but at any rate what this slave unit
20 does, it opens a valve that allows oil to go into the motor,
21 the winch motor, and the handle there, all it does is open
22 that valve more or less. It does so by having the slave unit
23 get to a position equivalent to or corresponding to the
24 handle that you have on top. So if you move that handle a
25 given amount, which would correspond to a given opening of

1 rgrm 147

2 the valve, presuming that because of air you did not open
3 that valve as much as it should have been opened, then, it
4 would move slowly to be sure, but then let's assume by whatever
5 reason the other spool down below did finally take its proper
6 position, then it can never go any faster than that which
7 would have been ordered by the position of the handle --

8 Q Master load?

9 A At the transmitter.

10 Q So if I understand you correctly, if you opened or
11 placed the handle on the transmitter in a position, say, of
12 five degrees, it might be possible that the lower handle for
13 the winch itself might not synchronize to five degrees, it
14 may, say, go to two and a half?

15 A That is correct, it could.

16 Q But as long as the transmitter handle did not
17 exceed five degrees, there is no possibility that the lower
18 handle could exceed five degrees or that the winch could
19 proceed at a speed faster than that; is that correct?

20 A No, it could not, for the reason that as you move
21 the handle one way or the other, if you were to have a
22 completely oil filled system, then the amount of oil --
23 since these pistons are all the same areas, the amount of oil
24 moving in one direction would have to be replaced by the
25 lower piston moving in the opposite direction. Likewise, when

1 rgrm 148

Napolitano-direct

2 you go in the reverse position the same thing happens.

3 Now, were you to have air on one side of the
4 system so that when you do move as you say five degrees, or
5 let's say one-inch movement, as you move that top ram one
6 inch you might compress the oil a half inch so that the total
7 movement down below would only be a half inch leaving --

8 THE COURT: It would compress the air, you mean?

9 THE WITNESS: It would compress the air to a volume
10 of only a half inch, leaving a vacuum on the opposite side,
11 but the vacuum on the opposite side will only be that half
12 inch difference or what you have compressed the air and the
13 oil that didn't move. So that if it were to suddenly move
14 the spool over, then it would take the same position that it
15 should have had the air not been compressed, and therefore,
16 you could not move any further because your column of oil is
17 now solid.

18 Q If you had such an air pocket or air bubble which
19 caused the winch to operate in a spongy -- or the transmitter
20 to operate in a spongy manner, once you had this condition
21 would the winch always operate in a similar manner until the
22 condition was corrected?

23 A I can't imagine how it would operate otherwise.

24 Q Will you assume with me that there has been testi-
25 mony in this case that a large automobile weighing 4000,

rgrm 149

1 4500 pounds was raised on the Burton boom to a point where
2 it was five or six feet above the ship's rail, and then it
3 was slowly being Burtoned across and as it reached a point
4 directly above the ship's rail, or approximately directly
5 above the ship's rail it suddenly moved in an erratic manner,
6 that is the Burton fall suddenly ran away, moved erratically,
7 and that the winch operator immediately returned his Burton
8 control handle to the neutral position. Would that stop
9 this winch, assuming there was an air pocket or air bubble
10 in there?
11

12 A Yes, it would, because you have two fail-safe
13 systems there. One is your spring return on the handle itself
14 of the transmitter system, that is the slave part of the
15 transmitter system so that it would return it to neutral,
16 and you also have a spring return to center on your pilot
17 valve, which isn't shown too clearly down at the lower end
18 here. Each of these would return the main valve in the winch
19 motor to a closed position. Once that winch has been closed
20 once that valve has been closed together nothing is going to
21 move within that motor.

22 Q Why is it that nothing is going to move within that
23 motor, Mr. Napolitano?

24 A Well, by the nature of its design you are moving
25 that motor by circulating oil through the veins and unless a

1 rgrm 150

2 vein rotates -- when a vein rotates it must push oil ahead of
3 it, or it rotates because oil is coming into it and then it
4 must be exhausted at the other end and if you close the path
5 by which it can be exhausted, then you will have trapped a
6 column of oil between the exhaust exit and the vein, and the
7 vein cannot move forward without either breaking the vein or
8 breaking a line, you just have trapped oil in there.

9 Q Is that because the oil in there is, in effect,
10 incompressible?

11 A It is incompressible.

12 Q Would you anticipate that if you had a certain
13 effect caused by an air bubble or an air pocket, that after
14 this erratic movement which I have described to you, in other
15 words a downward sudden arc, would you anticipate that the
16 winch would be susceptible or would react the same way on
17 future use unless something were done to repair it or to
18 change it?

19 A I would certainly expect it so, yes.

20 Q Would the weight of the object on the cargo hook
21 have any bearing as to whether the winch would be effected
22 by an air bubble or not?

23 A None whatsoever, no.

24 Q The weight is immaterial?

25 A That is correct, because --

1 rgrm 151

Napolitano-direct

2 Q And why is that, sir?

3 A Well, as I have said before, in order for the drum
4 to rotate oil has to go through the veins from an entrance
5 to an exit. No matter what the weight may be trying to make
6 this vein rotate, it can never rotate any faster than the oil
7 can move through there and that is controlled by a pump which
8 is pumping oil at a given rate. Whereas you might question
9 that while you are pumping at a certain rate, let's say 10
10 gallons a minute just to make it easy, why couldn't the oil
11 at the other side come in faster than that. Well, this is a
12 closed system and you cannot pump oil through one side of
13 the pump unless you receive it at the other end, and it can
14 only be received at the same capacity as you are pumping.
15 Your speed is limited. That is, your oil cannot go from the
16 return to the pressure unless the pressure moves ahead of it
17 and vice versa.

18 Q Are these cargo winches at the forward end of the
19 No. 3 hatch on the South African Huguenot, do they have any
20 time relays of any sort?

21 A No, they do not.

22 Q How rapidly, approximately, would this winch
23 accelerate, assuming a 4500 pound load? How rapidly would it
24 accelerate to full speed from a neutral position?

25 A Again it might accelerate very, very rapidly, but

1 rgrm 152

Napolitano-direct

2 it would never exceed the maximum velocity that is permitted
3 by the pump, which would be a total of six feet per second.

4 Q Have you had any experience with electrical cargo
5 winches?

6 A I have knowledge of them, yes.

7 Q Electrical cargo winches generally have timed
8 relays, do they not, Mr. Napolitano?

9 A They do, yes.

10 Q So that if you took your control lever on an
11 electrical winch and put it from the neutral or stopped
12 position to full lowering or full hoisting, certain appreciable
13 times would elapse before it went through the first stage,
14 second stage, third stage, depending upon how many positions?

15 A Yes.

16 Q Is there any such feature in this type of winch?

17 A There is not, except for the raising operation
18 which is a sequential valve opening, but that -- whereas it
19 sounds like you have to stop before something else happens,
20 that is a smooth operation. As soon as you are trying to
21 raise your load, as soon as you reach a certain capacity or
22 a certain pressure, if that is not enough to raise your load,
23 another valve will let another into another chamber to permit
24 the load to move.

25 Q Is that accomplished almost simultaneously as you

1 rgrm 153 Napolitano-direct

2 move your lever forward?

3 A Yes, it is practically instantaneously. By
4 practically instantaneously -- now, I am only speaking from my
5 knowledge of hydraulic response, it would be somewhere in the
6 range of about 200 milliseconds to perhaps 400 milliseconds.

7 THE COURT: A millisecond is what, a thousandth
8 of a second?

9 THE WITNESS: Yes, sir. It would be between .2
10 and .4 of a second.

11 MR. KAIN: Excuse me.

12 (Pause)

13 Q These particular winches on the South African
14 Huguenot, they can be operated by their own winch levers,
15 can they not --

16 A Yes, they can.

17 Q Without use of the transmittals or master system?

18 A Yes.

19 Q Which of the two systems, the master or the slave
20 system, if you will, or the remote or what we have been
21 calling the main system actually supplies the power to drive
22 the cargo winch?

23 A It is the manual system as you have been calling it,
24 or the slave system.

25 Q That is done by means of a hydraulic motor; is that

how it is done?

A Yes. It is a hydraulic motor which is supplied oil by a pump, and again it is a closed system so that you have as much oil going through the system as the pump can pump in a given time, a given rate, and by varying the bypass -- that is oil is being pumped and returned to the pump at a given rate, and in order to do that you have an open valve, a bypass valve, so that if nothing is happening your oil is just circulating and nothing else.

Now, when you start operating your manual control, what you are doing is you are closing the path that this oil must go through in order to return to the pump, so it must then necessarily go through the motor in order to get back to the pump. Depending on how much of the path that you close, the path that will return to the pump you close, that is how great your pressure will go up because you are offering a resistance to the path of this oil going back to the motor and as that happens your pressure goes up and it can only go through the motor itself now. If your pressure gets great enough to be able to move the veins, or move the obstruction, which is the veins of the motor itself, multiplied by the area of the veins times the pressure, will give you the force by which your motor will be moving. The more you close this bypass valve the more you increase the pressure of your

1 rgrm 155

Napolitano-direct

2 system. Of course, the more you increase the pressure of
3 your system the more valves you will open within your motor
4 to give you greater areas and give you greater force against
5 the rotor of the motor, that is the shaft that is rotating.

6 Q Would the presence of an air pocket or an air
7 bubble in some portion of the transmitter or master system
8 have any effect on the efficiency or the ability to work of
9 the winch motor itself?

10 A No. There is no tie between the two. No hydraulic
11 tie.

12 Q No hydraulic tie.

13 Is it a fair statement to say that the transmitter
14 in effect only operates the controls on the cargo winch;
15 is that what you meant by the slave system?

16 A That is correct. As a matter of fact, what you have
17 on the winch itself, you do have a manual handle which, if
18 for any reason you did not want to operate the so-called
19 master system, a man could go locally on the winch itself and
20 operate that handle. All we do with this is we tie the two
21 together so that rather than a man standing at the winch
22 operating it, a man can be remotely positioned and get the
23 same result by going through this master system.

24 Q Does that also permit one winch operator to operate
25 both cargo winches?

1 rgrm 156
2 A Yes, because he can then be at one position and
3 direct the movement of two winches.

4 Q Now, Mr. Napolitano, will you assume with me that a
5 car weighing approximately 4000, 4500 pounds is hooked onto
6 a cargo hook at No. 3 hatch of the South African Huguenot;
7 is raised from the dock by means of the Burton boom; that
8 when it reaches a point approximately five to six feet above
9 the ship's rail and as it is slowly being Burton across the
10 deck, slowly slacking on the Burton fall, slowly taking in
11 on the up and down fall, and assuming the testimony has been
12 that without any other intervening source from the operator --
13 in other words with the controls remaining in the position
14 in which I have described to you, that this car suddenly
15 took a downward swooping arc instantaneously, coming
16 ultimately to rest over the hatch square; could such a swooping
17 arc in your opinion result from an air pocket or an air bubble
18 in the transmitter system?

19 MR. LORY: If your Honor please, I will object to
20 the hypothetical question because, as I understood and
21 recall Mr. Coppola's testimony, it was as he started to
22 Burton and he took a strain on the up and down and started to
23 slack off. Mr. Kain's question presumes or supposes a fact
24 that the Burtoning operation started and during the middle
25 the phenomenon he described occurred.

1 rgrm 157

Napolitano-direct

2 MR. KAIN: That is my understanding of the testimony.

3 THE COURT: Well, read it back.

4 (Question read.)

5 THE COURT: Mr. Napolitano, do you understand that
6 the commencement of this arc in this hypothetical question
7 is to be assumed by you to begin as the car goes across the
8 rail?

9 MR. KAIN: Was passing over the ship's rail, your
10 Honor.

11 THE WITNESS: Yes, it is.

12 THE COURT: Will you please assume that in the
13 question and with that assumption I will overrule the
14 objection.

15 A If it is passing over the ship's rail it means that
16 it must have already been moving athwart ship, and that
17 being the case the motion didn't happen all of a sudden, it
18 started to move --

19 Q My question, Mr. Napolitano, is, assuming such a
20 movement as it was passing over the ship's rail with the
21 levers in the position I have described -- as it was passing
22 over the ship's rail assuming it made a sudden downward
23 swooping arc, ultimately coming to rest over the square of
24 the hatch, could that downward swooping arc, in your opinion,
25 have resulted from the presence of an air bubble or a pocket

1 rgrm 158

Napolitano-direct

2 of air in the transmitter system?

3 A It is difficult to conceive any such thing, but
4 it is possible that the velocity would have increased, but
5 not a swooping or a runaway type movement. The velocity might
6 have increased to bring the two handles into synchronization.

7 Q Assuming that the handle on the transmitter was in
8 the slow position. Is it possible that this air bubble would
9 have caused the winch motor to at any time exceed the speed
10 indicated by that handle, in other words, did he crack the
11 valve any further?

12 A No, absolutely impossible.

13 MR. LORY: Objection, your Honor. There is nothing
14 in the record to indicate that these winch controls had any
15 position and Mr. Kain has indicated a slow position.

16 THE COURT: Yes. On that basis I will sustain
17 the objection and strike the answer. Rephrase the question.

18 MR. KAIN: I didn't get the objection.

19 THE COURT: His objection was that you incorporated
20 in the question that his hand was in the slow position and
21 there was no slow position. I think what you were referring
22 to was he was moving the draft slowly -- the handles were in
23 the position to move the draft slowly and I understand that
24 is the basis for the objection.

25 Q Will you assume with me, Mr. Napolitano, that the

1 rgrm 159

Napolitano-direct

2 handles on the transmitter system were in a position --
3 incidentally, when the handles are placed in a position, they
4 affect a winch motor how?

5 A When the handles are placed in a given position
6 they open the control valve a given amount.

7 Q And if I push it all the way into the lowering
8 position, I open it fully; is that right?

9 A Fully, that is correct.

10 Q And if I just move it a little bit I just crack the
11 valve?

12 A You just open the valve a little bit which would
13 permit the motor to move only as rapidly as it can -- as the
14 oil can escape from it.

15 Q Assuming the handle is placed in a position -- that
16 is the Burton handle is placed in a position for a slow move-
17 ment of the winch; that is to crack the valve just so it will
18 move slowly, and that the up and down is also placed in the
19 position to just crack the valve so that the strain will be
20 slow. Is there, in your opinion, any possibility, because of
21 such an air bubble or an air pocket, that the slave control
22 will, because of this air bubble or air pocket, exceed the
23 speed as indicated on the transmitter control?

24 A No. It could not.

25 Q So that if I understand your testimony correctly,

1 while the air pocket might permit the slave unit for the
2 level on the manual or the main winch to move a little further
3 forward, it would, in effect, be synchronizing again with the
4 transmitter handle; is that correct?
5

6 A Yes. The eventual maximum position it could take
7 would be one in synchronous with the transmitter handle.

8 Q If at that point the transmitter handle was returned
9 to the neutral position, would that winch stop?

10 A It certainly should, yes, because when you are
11 returning to the neutral position, if there were air on the
12 one side which gave you an erratic or an inaccurate movement,
13 the other side did not have any air and, therefore, it would
14 return the spool to the proper position by virtue of the fact
15 that there is no lost motion on the other side of the oil.

16 Q Assuming, sir, that the cargo winch moved erratically
17 because of such an air pocket or air bubble, would it
18 thereafter continue to move erratically in your opinion until
19 this air pocket were eliminated or remedied?

20 A It certainly would seem so, yes. If the air makes
21 the lower spool not react like it is supposed to, it would
22 continually not react that way until whatever caused it would
23 be corrected.

24 Q There is no self-repairing feature to this winch,
25 is there, Mr. Napolitano?

1 rgrm 161

Napolitano-direct

2 A No, other than the so-called fail-safe feature
3 which returns the spool to a locked position so that, if
4 for any reason the operator dropped dead, let's say, the thing
5 would automatically come back to neutral and stop all
6 operation.

7 Q That would stop the entire operation of the winch,
8 would it not?

9 A Yes.

10 MR. KAIN: I have no further questions.

11 THE COURT: Mr. Lory, I assume you would want to
12 examine here for sometime, would you not?

13 MR. LORY: I would presume, and I would also
14 appreciate being given the opportunity to read these things
15 over again before.

16 THE COURT: So we will recess, ladies and gentlemen.
17 You will be available Tuesday?

18 THE WITNESS: Yes.

19 THE COURT: We will recess until 10 o'clock Tuesday
20 morning. Do not speak with anyone about the case or among
21 yourselves. Continue to keep an open mind. See you Tuesday
22 morning at 10 o'clock. Good night.

23 Good night, gentlemen. See you Tuesday.

24 (Adjourned to Tuesday, May 28, 1974 at 10:00
25 o'clock, a.m.)

622a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
MARIA IANNUZZI, Administratrix Before:
of Estate of Mario Iannuzzi, : HON. RICHARD OWEN,
deceased. : District Judge.
:
Plaintiff, :
:
vs. : 69 Civ. 2829
:
SOUTH AFRICAN MARINE CORP., :
:
Defendant and Third-
Party Plaintiff :
:
vs. :
:
INTERNATIONAL TERMINAL :
CO., INC., :
Third Party Defendant.
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New York, May 28, 29, 1974

STENOGRAPHER'S MINUTES

MARIA IANNUZZI, Administratrix of
Estate of Mario Iannuzzi, Deceased,

vs.

SOUTH AFRICAN MARINE CORP.,

68 CIV 2829

vs.

INTERNATIONAL TERMINAL OPERATING CO., INC.

May 28, 1974.
10:00 a.m.

(Trial resumed.)

(In open court, jury present.)

THE COURT: Good morning, ladies and
gentlemen. I had a good weekend. I hope you did and
I'm sure everybody is ready to go. Go ahead, sir.

P. EDWARD NAPOLITANO - resumed.

CROSS EXAMINATION

BY MR. LOPY:

Q Mr. Napolitano, last Thursday you
mentioned a mark on one of the exhibits, a gravity
tank; isn't that so?

A Yes, sir.

Q Can you tell me how many actual winches that
one gravity tank will service?

A That one gravity tank will serve all
systems connected to that one pump. There are some three

1 spa 2

Napolitano-cross

2 systems connected to that one pump.

3 Q With respect to the HUGUENOT, if we have the
4 gravity tank between hatches number 2 and 3, over the
5 pump house on the kingpost that is there, will that
6 service all the winches on that table? When
7 I say table, I am referring to the forward -- I'm
8 sorry, I am referring to the after winches at number 2
9 and the forward winches at number 3.

10 A It will service the winches on one side only.

11 Q When you say one side, it will service two?

12 A On the side of the hatch in which the tank
13 is located.

14 Q Is there another gravity tank for the forward
15 winch in number 2?

16 A Forward winches? I didn't look for it,
17 and I would assume that there is. I cannot say
18 it definitely yes or no.

19 Q Will you look at the exhibit, please.

20 P.R. LORR: May I have Exhibits A and B,
21 please.

22 May I have that question back, please, to
23 correct it if there is an error.

24 (Question read.)

25 Q We asked the question to the after winches

1 Qpa 3

2 at number 2.

3 MR. COMEN: I'm sorry, if the question is
4 amended, I don't know what that does to the answer, your
5 Honor.

6 THE COURT: The answer I assume is still, "I
7 would have to look at the exhibit to refresh my
8 recollection."

9 MR. LOKY: The witness is being shown Exhibit C.

10 A All right.

11 Q May we have an answer, please.

12 A I see only one, and it's on the side of the
13 pump room, so that it would be one tank.

14 Q And that would service how many winches,
15 Mr. Napolitano?

16 A To my recollection and my visit on the ship,
17 it would service three winches.

18 Q Which winches would those be?

19 A I don't have them in numbers, but they
20 would be the winches that are in question. They
21 would be the winches that were being operated.

22 Q You are referring to the forward winches at
23 number 5 hatch?

24 A If those are the ones in question, yes.

25 Q What would be the third winch that it would

1 service?

2 A There are three-- wait a minute. May I
3 see that again, please?

4 Q Why not?

5 A I see here two winches.

6 Q Are you referring to the after winches at
7 number 3? I'm sorry, the forward winches at number 3?

8 A I am. Yes, I am.

9 Q You mentioned three winches. What would the
10 third winch be?

11 A You have got me. I don't know what the
12 third winch would be, but from just looking at this
13 I would say that the third winch might be -- I don't
14 see a third winch.

15 I think the most honest answer is I don't
16 know.

17 Q Did you tell us on Thursday that there was
18 no gearing involved with respect to the cargo winches?

19 A I told you there was no gearing involved
20 between the motor and the drum of the winches, yes, sir.

21 Q Is there any gearing involved in the entire
22 winch system with respect to shall we say the
23 starboard winch that is forward of number 3 hatch?

24 A In terms of the shaft having to rotate in order
25

1 Gpa 5

Napolitano-cross

2 for the drum to rotate I will say no.

3 Q Mr. Napolitano, what is Planetary Type
4 Reduction gear?

5 A A Planetary Type Reduction gear is a gear
6 wherein you have a central gear on a shaft, then a
7 rotary internal toothed gear with other gears, usually
8 three connected between the outer rim and the central
9 shaft.

10 Q Is the five-ton cargo winch --

11 A I'm sorry, I didn't hear.

12 Q Was the five-ton cargo winch aboard the
13 HUGUENOT as you observed it upon your inspection
14 equipped with such a Planetary Type Reduction gear?

15 A Not so as I could tell, no.

16 Q Not so as you can tell. You told us
17 that you were aboard the HUGUENOT approximately for the
18 first time 12 to 14 months ago. That would bring us
19 to March-April-May of 1973; isn't that correct?

20 A That's correct.

21 Q What did you do when you came aboard?

22 A I went aboard; I looked into the pump room;
23 then I went on the deck; examined what we here call
24 the remote control system and I examined what we are
25 here calling the manual system, the reserve, if you will.

Goa 5

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Q The manual system is off to the side of the table, is it not, as it's fixed aboard the HUGUENOT?

A Yes.

Q And the remote system, when you checked that are you telling us that you checked the control stand?

A Yes.

Q Now, the control stand has a housing, does it not?

A A housing over it, yes.

Q Was the housing removed in any way?

A No, the housing was not removed. The housing in this particular case represented the tank, just the housing over the tank.

Q Does the tank go from the top of the housing to the bottom of the housing?

A The tank is a small reservoir at the top of the stanchion and the housing is over that.

Q Would it be fair to say that the tank that you were referring to is a bath in the sense that you have a vessel more towards the top of the unit?

A Yes, that's correct.

Q Firstly, what do you call this piece as

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depicted on this diagram?

A I would call that a cylinder.

Q Is that cylinder in a hydrolic fluid bath?

A It's below the tank and the hydrolic fluid is entered into it through a check-valve, or as they call it, a suction valve. That is an opening at the top of that cylinder on both sides with a small check-valve, or non-return valve, or to repeat as they call it in the bulletin there, a suction valve.

Q Is that the air extraction valve?

A No, it's not.

Q Is there an air extraction valve located there?

A Not in that unit, no. Not at the top. However, may I add to that?

Q You may.

A There are air extraction valves within the lines away from that unit.

Q While you were aboard the vessel did you check any records with respect to these winches at forward number 2?

A No, sir, I did not.

Q Did you request any records with respect to prior maintenance of these winches?

Qpa 3

Napolitano-cross

A I did not, sir. I was, however, in the presence -- wait a minute, now. Let me get that straight. No, I don't recall whether I was in the presence of the chief engineer, but someone gave me the information that they had filled that tank.

Q Was that someone a Mr. Pitt?

A He would be the chief engineer, and as I said, I'm not sure if it was he. I know someone told me. He told me that later, too, but when I was on board someone gave me that information.

Q Did you have a conversation with Mr. Pitt?

A Later. Not that day.

Q At any time you were on board?

A Not that day. The second time I was on board, yes.

Q Did Mr. Pitt tell you that they had experienced difficulty with respect to the phase adjustment on these winches?

MR. KATY: I object, if your Honor please. It's purely hearsay what Mr. Pitt told him.

MR. LORY: It's a direct conversation with the person, your Honor.

THE COURT: Yes, but I think I will not allow

1 Gpa 3

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2 the question to be put in that form. You may ask him
3 what Mr. Pitt said, if anything.

4 Q Did Mr. Pitt tell you anything about the
5 phase adjustment segment of the winches at
6 number 3 hatch?

7 A No, Mr. Pitt did not.

8 THE COURT: You have answered, sir.

9 Q You did tell us, Mr. Napolitano, that you
10 did review the instruction book and the plans of
11 the winches aboard the HUGUENOT, did you not?

12 A I reviewed those parts that I thought were
13 pertinent just to reinforce my own knowledge of the
14 systems.

15 Q These were five-ton cargo winches, were
16 they not?

17 A Yes. Two and a half tons, to five tons, as
18 I recall.

19 Q Do you recall what the particular numerical
20 designation was given these particular winches aboard the
21 HUGUENOT?

22 A I believe it was F1W 4 or 5.

23 Q Mr. Napolitano, I refer you to page 18 of
24 the instruction book and ask you if under the segment,
25 "Vital Parts," they do not list, "Planetary Type Reduction

1 Sps 10

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2 gear."

3 A They do in this book here, yes.

4 Q Does that refresh your recollection as to
5 whether this system was equipped with Planetary Type
6 Reduction gears?

7 A I still say that I didn't see it.

8 Q This has reference, according to the
9 plans, to the FMW five-ton hydraulic winches with 15-ton
10 heavy drum. Is that correct? Am I in the right section
11 of the book, sir?

12 A With 15-ton heavy drum would not be this
13 particular unit.

14 Q What would be this unit?

15 A I will look.

16 Q All right, I will pull away.

17 All right. If you will look here. There is
18 here, before I waste too much of your time, mine and
19 the Court's, a drawing number 3669. All right.

20 THE COURT: Mr. Lory, he has made reference
21 to a drawing which incorporates this particular winch.

22 A There are two drawings here with the general
23 type FMW 4. One is a five-ton winch with a 15-ton
24 heavy drum and one is simply designated here as a hydrolic
25 cargo winch, general assembly, which is also called type

1 Gpa 11

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2 FIM 4. It does not have the 15-ton heavy drum on it.

3 This is the one I saw.

4 THE COURT: The latter?

5 THE WITNESS: The latter. The one shown on
6 drawing number 3614.

7 THE COURT: If I may have a moment, your
8 honor.

9 (Pause.)

10 Q Mr. Napolitano, will you go to page 18
11 of that particular instruction book.

12 A Right.

13 Q Do you have it?

14 A I have it.

15 Q Will you look to the bottom of the page,
16 FIM-4, five-ton hydraulic cargo winch, drawing
17 number H 2-3614. That's the one you just referred to?

18 A Yes, sir.

19 Q The one that doesn't show the planetary
20 gear?

21 A Yes.

22 Q Will you tell me what that says on the
23 following page with respect to that particular section?
24 Do they not also refer in that to reference to Planetary
25 type reduction gear?

1 Cpa 12

Napolitano-cross

2 A Yes, sir. I see where you are referring.

3 Q Do you see it?

4 A Yes, but I am looking for --

5 Q They do refer on page 19 with respect to
6 that winch, the inclusion of Planetary Type Reduction
7 gear, do they not?

8 A Yes, they do. Wait a minute.

9 "72 horsepower, 440 volt, 60 cycle with
10 Planetary Type Reduction gear ~~is~~ an electric motor, it's
11 not a hydraulic winch."

12 Q The motor is referred to, is it not, and
13 the Planetary Type Reduction gear on the drawing which
14 is 3630 with respect to the one that includes the heavy
15 drum; that is also with reference to the electric
16 motor, is it not?

17 A But it has the vital powers which -- the vital
18 parts which includes the drive motor for the pump
19 for this hydraulic motor and it's the electric motor
20 that has a Planetary Type Reduction gear in it. It's
21 not the pump nor the winch.

22 Q I am merely asking, Mr. Napolitano, if the
23 system, as set up, the transmitter, the receiver
24 or whatever the other exponent of the are, do they not
25 include a Planetary type reduction gear?

1 A It's a very ambiguous and a very misleading
2 question. We are speaking of hydrolic systems. None
3 of the **hydraulic** systems have reduction gear in it. The
4 entire total system does have a planetary gear for
5 reducing the electric motor speed, which is
6 usually 1800 RPM, down to the pump speed, which is
7 200 RPM.
8

9 Q The electric motor is part of the
10 **hydraulic** system, is it not, in the sense that it drives
11 the pump.

12 THE COURT: Mr. Lory, I think we understand
13 the relationship of one to the other and would you
14 gentlemen come to the side bar for a minute, please.

15 (At the side bar.)

16 THE COURT: May I ask, Mr. Lory, outside
17 the hearing of the jury, what we are getting into with
18 this area because I don't see how this has the slightest
19 relevance to what this man testified to on direct.

20 MR. LORY: He testified to on direct that
21 there were no gears.

22 MR. KATZ: MR. LORY --

23 MR. LORY: He testified before the Judge on
24 Thursday that there were no gears between the winch and
25 the -- what do you call it?

1 Gpa 14

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2 MR. KAIN: The hydraulic motor.

3 MR. LORY: The hydraulic motor and the winch
4 drum.

5 THE COURT: Yes, and he so repeated himself.

6 MR. LORY: Fine, but I don't know what this
7 jury heard. Mr. Perencyz mentioned the fact that there
8 was gearing involved.

9 THE COURT: No, I don't think he mentioned
10 there was gearing involved because he had never seen it.

11 MR. KAIN: But he did see that the manual
12 indicated there was gearing between the hydraulic motor --

13 THE COURT: The manual, but he had never
14 seen this particular unit.

15 MR. LORY: No, but he did indicate that the
16 manual did and --

17 THE COURT: Then assume that that is so.
18 Then what?

19 MR. LORY: I just wanted to show that the
20 plans at least are being consistent.

21 MR. KAIN: It's being moved back to the
22 electric motor and that has no bearing on this.

23 THE COURT: I am trying to understand why
24 we spent 25 minutes on this issue because I don't see
25 that it has any air in the hydraulic motor.

Cps 15

Napolitano-cross

MR. COHEN: It's devastating cross examination.

MR. LORY: I don't need that.

THE COURT: We have spent 25 minutes on this and I don't see that it's relevant, even if it were so.

MR. LORY: It's only to reinforce what Mr. Ferenczy had earlier stated. Now, if the jury had understood initially that we are talking about the drum in the motor, fine. If they did not, at least the specs provide that there is gearing involved.

THE COURT: But this man has said the gearing is in the electric motor.

MR. LORY: Fine. At least the jury knows there is gearing.

THE COURT: How does the gearing affect your issue?

MR. LORY: Only to support and lend more credence to what Mr. Ferenczy had earlier told us. I am not going to pursue this point much further.

THE COURT: It seems to me we spent almost a half hour on something that is just marginally relevant. I would like to avoid that because we do have to get this trial concluded, you know.

MR. LORY: I know.

1 Gpa 15

Napolitano-cross

2 I will try to go as fast as I can, Judge.

3 (In open court.)

4 Q When you mentioned last Thursday that the
5 system at number 3 hatch with respect to the forward
6 winches was included a bleed valve.

7 A Yes.

8 Q Is that the same valve as the air extraction
9 valve?

10 A Yes. A bleed valve is an air extraction
11 valve. That's the general term for an air
12 extraction valve is a bleed valve, air bleed.

13 Q Is this bleed valve something that works
14 automatically or is it something that's
15 manually operated?

16 A There are both types. This particular
17 system had a manual type bleed valve.

18 Q How many did it have?

19 A Three. One in each line. Two for the
20 slave and reserve system and one for the brake.

21 Q And assuming for the moment that
22 there was air somewhere in the remote system, this
23 valve would have to be opened at the time that you
24 were putting in fluid in order to permit the air to
25 be extracted; is that so?

1 opa 17

Napolitano-cross

2 A That is correct, yes, sir.

3 Q You told us on Thursday that the remote
4 control handles was spring loaded, isn't that so?

5 A That is so, yes.

6 Q The pilot valve, which is depicted on that
7 diagram, is also spring loaded, is it not?

8 A That is right, sir.

9 Q And the piston on the working cylinder is
10 also spring loaded, is it not?

11 A The piston on the working cylinder might
12 be spring loaded, and that is what might make that
13 handle return, or the spring might be right on the
14 handle itself. I could not tell where. I just
15 operated the handle and saw that it returned.

16 Q Mr. Napolitano, with respect to the
17 lowering segment of the remote system and the
18 hoisting segment, they are separate and independent
19 and unconnected; is that correct?

20 A Unconnected hydraulically, yes, sir.

21 Q However, between the two we have a
22 phase adjustment situation which is depicted upon that
23 diagram by the dotted lines?

24 A Yes, sir.

25 Q Assume for the moment that the hoisting

1 Gpa 12

2 segment -- or let's do it the other way. Assume for
3 the moment that the lowering segment of the remote
4 control system is completely filled with fluid and that
5 there is air entrapped in the hoisting segment.

6 A Yes, sir.

7 Q Would there be a difference that the operator
8 could feel with respect to manipulation of that handle?

9 A Oh, yes, sure.

10 Q This difference in one respect would make one
11 side stiff as opposed to the other side being **flaccid**
12 or loose?

13 A Right. Yes, sir.

14 Q Now, this rod that we have directly beneath
15 the control handle, is that sealed within the other
16 segments of that; it pushes back and forth as a piston
17 would do between --

18 A Yes.

19 Q A sleeve of some sort?

20 A Yes.

21 Q What keeps the seal there, is that an O ring?

22 A Yes. There would be a groove on that rod
23 itself which, let's call it a piston with a rack on it
24 and there would be a groove either on the rod, or within
25 the cylinder wall, and either an O ring or possibly more

1
2 likely, a U type cup would be there to keep the oil from
3 leaking out.

4 Q You mentioned also on Thursday that that was
5 in an enclosure, that piston was within an enclosure,
6 a lower enclosure; is that correct?

7 A Yes. I mentioned that this morning.

8 Q In the event that there was air in the
9 system, that would indicate some reduction in the amount
10 of fluid that was in the system itself on that particular
11 side?

12 A Yes, sir.

13 Q And you did also mention last Thursday the
14 fact that they had designed into the system some
15 leakage in order to permit cooling and lubrication,
16 did you not?

17 A Now, please, quote me correctly. We were
18 speaking of the main pumping system, the large pump that
19 operates both the pump -- the large system that operates
20 both the pump and the motor, the hydraulic motor. It's
21 there that you have the leakage designed into it, and
22 it was there that I said it would be making up the liquid
23 from the tank above.

24 Q I take it from your testimony that there
25 is no leakage designed into the remote system?

1 A No designed leakage, no. You would get a
2 leakage when you open your air valve, your air bleed
3 valve to get the air out.
4

5 Q What is the proper procedure, Mr. Napolitano,
6 with respect to extracting air from shall we say the
7 hoisting side of the remote system?

8 A Well, there are many, but in this particular
9 one, the one that I would follow, it would be simply
10 to go to the air valve and open it up. I could be neat
11 about it, housekeeping and I could put a little hose
12 over it to a beaker so I don't get oil all over the
13 floor, or if I wanted to be messy I would just get a
14 chaser of air with bubbles of oil and then pure oil,
15 in which case I would know that air has been taken out
16 of that system. The reason that the oil would come
17 down is right above that rack and above the pistons
18 themselves we have oil at a little higher level, and
19 as I said, there are those check valves, whatever you
20 want to call them, which permit oil to go in, but "
21 not to come out, and, therefore, the oil would come
22 down, because it's at a higher level, and would just
23 drain out to the point where the bleed valve is.

24 Q What would be the purpose of the cup
25 there apart from good housekeeping?

1 Cpn 21

Recall to cross

2 A I can see no other.

3 Q Depending upon atmospheric pressure,
4 could you have feedback with the valve open?

5 A No.

6 Q Isn't the purpose of the cup to eliminate
7 the possibility of feedback?

8 A Well, if let us say that you are going to
9 move the thing the wrong way, possibly you can feed some
10 air back into the system, but if you are bleeding air
11 out you certainly would not move the handle until
12 and unless your air bleed valve were closed.

13 Q No, what I am referring to is while you were
14 extracting air, you are using a pump, correct?

15 A No. Extracting air, your only pump might
16 be --

17 Q You are using the pump to pump oil into the
18 system, are you not.

19 A Yes, and it's above.

20 Q And it's reciprocal due to the fact that
21 you are forcing air through the pump itself?

22 A No. You are compressing oil through it and
23 the pump itself has check valves which permits oil to
24 go through, and when you are operating in the other
25 direction, when you think air might be coming in your

1 check valve is closed.

2
3 Q What do you do, just take the vinyl tubing
4 from the pump and connect it to the top of the remote
5 housing and then start pumping the oil into the system;
6 is that the way it works?

7 A You take what?

8 Q You take the pump, and there is a vinyl tube
9 or some tube coming out of the pump --

10 A Some tubing. It doesn't have to be
11 vinyl.

12 Q This is now secured to the top of the
13 control station, or whatever you want to call it.

14 A All right.

15 Q Then you just start to proceed to pump; is
16 that so?

17 A Yes.

18 Q You don't do anything else before then?

19 A You are filling a container above it. Now,
20 you might also try to extract air at the same time.
21 You close all your other lines -- you have three or two
22 plugs on top. You connect your oil connection to one of
23 those plugs and you start pumping.

24 Now, if you were to have everything closed,
25 very soon you wouldn't be able to get much oil out of
your pump because you would entrap air within that

1 Gpa 23

Napolitano-cross

2 system, so you would have to open the square to let some
3 air out. If you were trying to extract some air from
4 the lines, you might open one of the valves and keep
5 pumping so as you pump oil into the system itself -- and
6 air, too, into that reservoir, you will be pumping oil
7 through the lines and out through that bleed valve.

8 Now, if you are pumping air into that
9 reservoir you will have the air collecting
10 at the top of your oil, because you will have an oil
11 seal or an oil film below it which connects to that
12 cylinder.

13 Q Is it not true, Mr. Napolitano, that unless
14 the tubing itself is filled with oil at the time of
15 the connection you are going to be pumping air into that
16 particular system before you get the oil in there?

17 A Into that vessel, yes. Into that reservoir.

18 Q With air in the system, and in this particular
19 case on the hoist side --

20 A Yes.

21 Q --would that cause an erratic performance of
22 the winch?

23 A Air on the hoist side. It might have caused
24 just that, a slowing -- that is a response which is not
25 exactly equal to the movement that you are giving the handle,

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2 and it could conceivably be that it would move slowly
3 until you got enough pressure within the air itself so
4 that the air would release, relax or expand, whatever
5 term you want to use, and you would then move the --
6 let's call it the pilot valve down below to the position
7 corresponding to where the correct position should be
8 relative to the manual -- to the handle up on top, the
9 transmittal handle.

10 Q When the air is released, would that not
11 cause an increase in the velocity of the movement of the
12 handle suddenly?

13 A A velocity of the movement of the
14 handle?

15 Q You are going from the lower to the neutral
16 to the hoist.

17 A Right. Yes.

18 Q If you remember, my question or my hypothetical,
19 Mr. Napolitano, the lowering --

20 MR. COHEN: I am going to object, but I
21 want you to finish your question.

22 Q The lowering segment is completely filled
23 with oil and we have some air in the hoisting segment?

24 A Yes.

25 MR. COHEN: If your Honor please, at this

1 Gpa 25

Napoli and cross

2 time I would like to object. Mr. Lory's hypothetical
3 is based upon movements of the winch that Mr. Coppola
4 never testified to doing. He didn't say he went from
5 the lower to the neutral to the hoist with the Burton
6 winch.

7 MR. LORY: I submit to the Court there
8 is no other way to operate the winch.

9 MR. COHEN: I thought we were talking about
10 what happened at the time of the accident.

11 MR. LORY: We are talking about what
12 happened at the time of the accident. He raised
13 on the Burton, which meant that he was in the --

14 THE COURT: He might have put it in neutral.

15 MR. COHEN: He was slacking out on the
16 Burton.

17 MR. LORY: All right, I accept it. I have
18 it in reverse. I have it in reverse.

19 Q Assume a competent winch operator is
20 now hoisting on this particular winch wherein with respect --
21 excuse me a moment. I just want to get it straight in
22 my mind.

23 He is raising on the winch -- that means
24 he has his handle in the hoist position -- and the hoist
25 segment of the remote control system is completely filled

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with oil, while at the same time the lowering position is not; that we have some air in that particular system. Inorder to operate this winch, would he not have to pass from the hoist position through neutral to the lowering position?

A Yes.

Q This would be one continuous movement from wherever he had it as far as the speed was concerned on the hoist through the neutral and now to the lowering position?

MR. KAIN: I have an objection, your Honor. I don't believe there is any testimony that the winch operator's motion with his controlhandle was one continuous movement.

THE COURT: Yes, I will sustain the objection to the form of the question.

Do you want to explore, Mr. Lory, into the theory of the hydraulics rather than posing hypotheticals to the witness that do not have support in the operator's testimony? I think it appropriate for you to inquire into the aspects of things that have to do with the laws of physics and the laws of hydraulics, but I don't think you can put a hypothetical to this witness that is not supported by testimony in the

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2 case.

3 MR. LORY: May we have a side bar, your
4 Honor, because I don't want to say something --

5 THE COURT: All right.

6 (At the side bar.)

7 THE COURT: All right.

8 MR. LORY: If your Honor please, it has been
9 plaintiff's contention, and Coppola's testimony throughout
10 this trial that after he hoisted the vehicle to five
11 feet above the deck he then proceeded to move that
12 particular handle -- or first he took a strain on the
13 up and down and then he moved that particular handle
14 to slack off on the Burton. I submit to your Honor that
15 it was only during the course of cross examination,
16 in order to tell this jury precisely what happened at
17 each segment, that the movement itself was broken
18 into segments. Mr. Coppola's testimony was merely the
19 fact that he raised it, he took a strain on the up and
20 down and started to slack off. In order to do this he
21 would have to move this control handle in one sequence,
22 operating both of them together. It was only in
23 cross examination that everything was broken up into
24 segments and all of a sudden I am saddled with the
25 objection that Coppola didn't say this or that or there

1 Spa 23

Napolitano-cross

2 wasn't a continuous movement.

3 MR. KAIN: It's true, he did not testify.
4 Once more, in his EBT he did not testify to that.

5 MR. COHEN: If that's an important factor
6 for you, I think it was incumbent upon you to discover
7 it clearly from him.

8 THE COURT: I think that if you get the
9 words "Continuous movement" out of it you probably
10 won't get an objection, but I don't remember there
11 being any continuous movement. I assume that when the
12 Burton got to the height where he could move the cargo
13 across the deck he probably put it in neutral and
14 then moved it, although we have no specific statements
15 that he made a continuous movement.

16 MR. LORY: If your Honor please, I
17 believe it was clearly implied in his statement that he
18 went from the hoisting to the lowering position.

19 THE COURT: Why don't you put it that way,
20 then, and then you cure the objection. It's the
21 continuous movement statement that Mr. Cohen is
22 objecting to.

23 You see, the problem that you have is that
24 your operator witness testified to doing certain things
25 and it seems to me that it's only appropriate to examine

3p. 28

an expert in the context of what happens if you do those particular things. That's fair enough, isn't it?

MR. LORRY: Yes, your Honor.

THE COURT: Within those limits obviously you can inquire into all sorts of things having to do with the structure of this equipment and what effect this had and what effect this has, but it seems to me if you are going to put a hypothetical to him you have got to stay within the reasonable inferences that can be drawn from the actual testimony.

MR. LORRY: That is just my point, your Honor. I think it's a reasonable inference to draw here the fact that it's one motion, because he goes from this position to this position.

THE COURT: Well, you go ahead on that basis. I don't frankly think it makes an awful lot of difference.

(In open court.)

THE COURT: I will overrule the objection.
Go ahead.

MR. GREENSPAN, we had a question. Would you read it back.

(Question read.)

THE COURT: Mr. Inopolitano, assume that as

1 upa 30

Napolitano-cross

2 a fact in the answer that you are about to give, will
3 you?

4 THE WITNESS: Yes, but the only thing is
5 may I have the other part? Could he say it again?

6 THE COURT: Mr. Lory, say it again to save
7 us the time of finding it.

8 Q Assume that we have on the lowering segment
9 of the remote control system a slug of air, for lack
10 of a better descriptive term --

11 A Yes.

12 Q And that as the winchman after having
13 raised something with that particular winch now moves
14 from the hoisting position to the lowering position to
15 slack off and at that particular point you used an
16 expression with respect to the -- I am trying to think
17 for the moment what the expression is that you used.
18 Do you recall, Mr. Napolitano, what you said what would
19 happen to the air?

20 A It would expand. It might expand suddenly.

21 Q And if it did expand suddenly, what would be
22 the effect with respect to the movement of the pilot
23 valve as dictated by the movement of the hydrolic fluid;
24 would that cause that pilot valve to suddenly move a
25 given distance with some velocity?

Q 11

1 The velocity is the term I would object
2
3 to because as the air expanded its pressure would reduce
4 radically and the chances are that it wouldn't even
5 move that thing any more than the necessary force to
6 simply push the oil out of the way on the other side.

7 Q wouldn't the air in this particular
8 example be compressed to the point that it pops in a sense?

9 A It's compressed to that point only because
10 there is that much resistance against movement of that
11 other piston down below.

12 Q And if the --

13 A Yes.

14 Q If it did in fact pop, what would
15 the popping effect be on the pilot valve; would it
16 not thrust that valve a little more forward?

17 A A little more forward, yes, but the word
18 pop is incorrect also because all it would do would be to
19 move it a little bit forward, yes.

20 Q And that would result in the winch
21 moving a little bit faster, would it not?

22 A A little bit faster to the point where the
23 operator had the handle.

24 Q Now, Mr. Napolitano, did you notice anything
25 in the instruction manual -- you did read it, did you not?

1 Cpa 32

Napolitano-cross

2 A Not all of it. As I said, only those parts
3 that I wanted to reinforce my own knowledge on.

4 Q Do you agree, sir, that with this type of
5 system, the Fukushima system that we have aboard the
6 HUGUENOT, that there would be fluctuations in phases
7 over a long time run or after a long run of the winch?

8 A Do I what?

9 Q Agree with that particular statement.

10 A It might be, yes, and may I add that it would
11 not be peculiar only to the Fukushima system.

12 Q I call your attention to pages 51 and 54 of
13 the manual. Page 51 just above the item number 7 --

14 A You are a little faster than I am.

15 Q Take your time. I'm sorry.

16 Mr. Napolitano, would you accept that this
17 is another copy? Page 51 just above item 7 and
18 page 54, the first two lines of item 2.

19 A Yes.

20 Q Will you confirm the fact that the
21 instruction manuals make reference to the effect of
22 long-time run with respect to fluctuation?

23 A From this, yes, I will.

24 Q Mr. Napolitano, would you agree, sir, that
25 with respect to hydraulic winches, that when you go from a, for

1 Q Q Q

2 example a hoisting motion to the neutral position with
3 respect to your control handle, that the winch itself,
4 unless the brake is applied, would also creep, continue
5 to run for a short space of time thereafter?

6 A If you stopped, went to the neutral position,
7 and you just let the load hang?

8 Q Yes.

9 A Yes, I would agree to that. That is not
10 part of the transmitting system, however. It's not part
11 of the --

12 Q This is one of the characteristics of
13 hydraulic winches, is it not, the fact that it does not
14 come to an immediate stop?

15 A It comes to an immediate stop, but it will
16 then afterwards creep. This is that leakage that we
17 were speaking about.

18 Q Did you have occasion to operate the
19 winches -- withdrawn.

20 A When you went aboard the vessel 14 months
21 ago -- 12 to 14 months ago for the first time, you
22 knew that you might have to come to Court with respect to
23 this case, did you not?

24 A Yes, sir.

25 Q When you went aboard again eight months ago

1 Qpa 24

2 you knew that also?

3 A Yes, sir.

4 Q You were paid for both your visits?

5 A Yes.

6 Q Mr. Napolitano, are you being paid by
7 the hour or are you being paid a flat sum?

8 A A flat sum. By the day.

9 MR. LORY: I don't have anything further
10 for this witness.

11 THE COURT: All right.

12 CROSS EXAMINATION

13 BY MR. CORY:

14 Q Mr. Napolitano, at the beginning of this
15 morning's session Mr. Lory asked you a number of
16 questions about a gravity feed tank. Do you recall
17 that?

18 A Yes.

19 Q Does that gravity feed tank have any
20 connection to that remote transmitting system?

21 A No, sir. There is no connection at all.

22 Q Mr. Lory this morning also asked a number
23 of questions about Planetary Type Reduction gears.

24 A Yes.

25 Q Does that have anything at all to do with

3pa 35

Napolitano-cross

this remote transmission system.

A No. None whatsoever.

Q Last Thursday you used the term in answer to one of Mr. Kain's questions -- you said that there are some fail-safe systems incorporated in this hydrolic winch. Do you recall?

A Yes. I said there were fail-safe features, yes.

Q Could you explain to us what those fail-safe features are and what you meant by that terminology?

A Well, in design of almost any system, and especially in my case the hydrolic systems, we design all components so that in case of failure, like say, for instance, a burst line, or whatever, we design all systems so that in case of failures they will return to a safe position; that what will happen will be to stop the system; that is, it will not function, but it will not do anything which is detrimental.

Q What such fail-safe things are involved in this remote transmission system?

A Well, one of them is what is not shown there, the springs that return the handles to the neutral position, and the other, of course, is shown, the pilot valve having spring returns so that in case of the

1 Gpa 36

Napolitano-cross

2 system returning to neutral, or the operator just
3 blacking out or anything, that pilot valve will
4 return to a central position which will block all
5 passages, and, therefore, there can be no movement of
6 your motor.

7 Q What did you mean when you said, "If the
8 operator should black out or anything."

9 A Just for the sake of argument, to use a
10 term, just that, he blacked out, fell over or let go
11 of the handles, it would automatically return to a
12 point where nothing will operate.

13 Q It's sort of like what they call a dead man's
14 brake in a locomotive, in case something should happen
15 to the operator, he should have a heart attack or
16 something?

17 A Yes.

18 Q To your knowledge, are there any devices
19 built into this system that would dampen or have the
20 effect of dampening vibrations?

21 A Well, the springs themselves would be
22 doing that within the pilot valve. Also the O rings that
23 are -- or seals, which are -- they have what we call
24 compliance. They are a resilient sort of material and
25 they will actually dampen vibrations within the components

1 Q 37

capolitan-cross/redirect

2 themselves.

3 Q Are they deliberately built into the system
4 for that purpose?

5 A You almost couldn't avoid it, yes.

6 MR. COMPTON: Thank you very much.

7 REDIRECT EXAMINATION

8 BY MR. TAYLOR:

9 Q Assuming this master system and this
10 slave system is out of phase with the manual
11 system because of the presence of air in the line, there
12 is no way that this out of phase operation can correct
13 itself without removing the air, is there?

14 A Yes, that is so. It cannot just get into
15 phase again.

16 Q Is it a fair statement to say once it's out
17 of phase it will continue out of phase until
18 something is done to remove the air?

19 A Yes, it's safe to say that. It might get

20 Q With this out of phase operation, assuming
21 a slight erratic movement because of air in the line,
22 and air pocket in the line, is this system designed so
23 that it will level out and suppress it?
24 with the air in the line, a pocket of air in the

Q Now, assuming you move the master or the remote system five degrees to just crack the valves to operate the winch and that because of this air in the line the slave or the manual system moves only a portion of the five degrees that just cracked the line, is there any way that the manual system can thereafter move in effect say to ten degrees?

A In other words, can it exceed the speed as indicated by the remote end?

A No, it can't. Can it assume a position greater than the transmitting handle?

A No, the transmitting handle.

A No. Impossible.

RECESS EXAMINATION

BY MR. MOORE:

Q Isn't it a fact that the pilot handle itself will be the only thing that can determine the speed at which the winch will operate?

A The position of the pilot handle, yes.

Yes, the position of the handle in the winch itself.

Q It's the pilot valve and not the handle that ultimately controls the speed of the winch; isn't that so; the pilot valve and not the operating handle that ultimately controls the speed of the handle; isn't that

1 Q A 12 Napolitano-recross

2 A 13

3 A Yes.

4 Q In this system you do have lines connecting
5 the various components, isn't that so?

6 A Yes.

7 Q These lines would be within the stanchion,
8 the control stanchion and also go down below deck into
9 the pump room, would they not, on the HUGUENOT?

10 A No, they would not. These go from the
11 stanchion under the deck, or whatever, to the winch
12 itself to the so-called slave unit, which is
13 directly next to the winch.

14 Q Do you recall approximately -- I know you
15 didn't measure it and you don't have plans before
16 you -- the distance between the control stand and the
17 operating winch?

18 A I would judge at about -- the total length
19 of lines might be as much as 40 feet. They might be.
20 They might be less.

21 Q When you were aboard, did you make any notation
22 as to the number of stoppers they had on this line? What
23 I mean by stoppers is the word referred to in the manual,
24 but something to hold the line in a rigid position?

25 A No, I did not.

1 Gpa 40

2 Q If they were not present, would not the
3 line vibrate as the fluid passed through?

4 MR. KAIN: If your Honor please, I submit
5 this is improper cross examination or recross, and I
6 also submit to your Honor that there is no testimony
7 either one way or the other as to the amount of supporting
8 stoppers.

9 THE COURT: Yes. I will sustain the objection.

10 MR. LORY: If your Honor please, the issue
11 of vibration was brought up by Mr. Cohen.

12 THE COURT: I know it was, but I am
13 basing this on the second objection, which is that
14 there is no showing whatever as to the support for
15 these lines.

16 MR. LORY: I am merely asking the effect of
17 the absence of them.

18 THE COURT: I know, but there is no showing
19 as to whether they were present, absent or otherwise.

20 MR. LORY: The witness said he didn't
21 recall them, your Honor.

22 THE COURT: All right.

23 THE WITNESS: I say I didn't look for them.

24 THE COURT: He said he didn't look for them.

25 Q Would it have been important to look for?

1 Gpa '11

2 A No, because I am familiar with the classing
3 rules and it's the classing agencies that determine
4 what sort of supports are to be used on these lines,
5 at what spacing.

6 Q Would a line under pressure be subject to
7 vibration?

8 A Not because of the pressure. It would
9 be subject to vibration if there is vibration throughout
10 the deck.

11 Q Mr. Hapolitano, would the location of an
12 air pocket within the system be important with respect
13 to determining whether you would have a repeated
14 erratic movement of a winch by reason of the presence
15 of it?

16 MR. COHEN: I object to the question.

17 THE COURT: Yes, I will sustain the objection
18 on the grounds of form.

19 Q Does the location of an air pocket within
20 the system have any significance?

21 A The point at which it occurs, is
22 that what you mean by the location?

23 Q The point at where the air is.

24 A No, it's not, because the air --

25 THE COURT: You have answered, sir.

1 Gpa 42

Napolitano-regress

2 THE WITNESS: I'm sorry.

3 A It's not.

4 Q Would it be of significance if it were near
5 a seal?

6 A No.

7 Q Would it be of significance if the seal was
8 defective?

9 A If the seal were defective then you would
10 get no action at all.

11 MR. COHEN: There has been no testimony
12 about any defective seal, your Honor.

13 THE COURT: Yes. Strike the answer and
14 I sustain the objection.

15 Q Mr. Napolitano, with respect to
16 fail-safe features, they related only as Mr. Cohen
17 aptly described it, dead man control operation for
18 complete abandonment of the winch control?

19 A Yes.

20 Q Those were the only fail-safe features that
21 were incorporated into the system; is that so?

22 A The only fail-safe system that I noticed
23 in this, yes.

24 MR. LOKY: I have nothing else.

25 THE COURT: Mr. Napolitano, if I could ask a

1 question or two. If you have an air pocket on one side
2 of the remote system, as is described on the top of
3 that Exhibit 15, and you pushed the lever to make
4 the ram go into the cylinder on the opposite side,
5 which is forward, you would get a normal pressure, would
6 you not, a normal resistance to your handle?

8 THE WITNESS: That is correct.

9 THE COURT: If you push it the other way
10 you could get an easier motion of the handle because the
11 air might compress; is that right?

12 THE WITNESS: Yes.

13 THE COURT: The reason I asked you that is
14 that you were asked by Mr. Lory, I believe, that
15 if you pushed it one way it would be stiff and
16 the other way it would be easy. Now, what you meant
17 was that you would get the normal response in one direction
18 but you could get an easier response in the opposite
19 direction; is that right?

20 THE WITNESS: Yes, sir, that is correct.

21 THE COURT: Now, this creep that was
22 mentioned by you but not explained. What is this creep
23 that you explained when the handle is returned to normal?

24 THE WITNESS: When the handle is returned to
25 normal, there is no creep within the master unit. The

1 creep I was referring to was the creep within the
2 winch itself, the winch motor.

3
4 THE COURT: The winch drum itself?

5 THE WITNESS: The winch motor.

6 THE COURT: How much is that creep? Is it
7 inches or a foot?

8 THE WITNESS: It's a function of time, but
9 I might assume that it might creep as much as, oh,
10 6 to 12 inches a minute, or some such figure as that.

11 THE COURT: You also were asked with regard
12 to a longtime run with respect to fluctuation. What
13 is the significance of that series of words?

14 THE WITNESS: Well, within the system itself,
15 if it's left for a long time untended, then you can
16 have perhaps the seals becoming embrittled, in which
17 case you might have leakage in one direction or the
18 other, and therefore, as you move the handle in
19 one direction the oil would necessarily move
20 fowards to move the corresponding piston, but also a
21 little of it might leak through the seal because it has
22 been brittled.

23 THE COURT: When you say longtime, what is
24 meant by the term longtime?

25 THE WITNESS: Well, I wouldn't consider anything

1 less than a month to be a long time.

2 THE COURT: Thank you very much, sir.

3 Any questions that are provoked by my
4 questions?

5 BY MR. LORY: Yes, your Honor. I have
6 to find it again.

7 RECROSS EXAMINATION

8 BY MR. LORY:

9 Q Mr. Napolitano, is it your testimony
10 when they refer in the manual to abandoning the winch
11 for a period of time where the winch remains inoperative
12

13 A Yes.

14 Q With respect to longtime running?

15 A Yes.

16 Q Would you look at page 33, please.

17 A Yes.

18 Q Just following item number four.

19 A Yes.

20 Q When Fukushima tells us, "In case that the
21 deviation of the phase is prolonged after longtime driving."

22 A Yes.

23 Q That means operation of the winch, doesn't

24 A Yes.

25 A Yes.

Q. 1

MR. LORY: Thank you.

THE COURT: What is "Longtime"?

That's the thing that I think was in issue,

Mr. Lory.

MR. LORY: No, the longtime I had reference to was the fact operation. Mr. Napolitano suggested to us lack of operation. The manual refers to longtime operation.

THE COURT: Let's define, then, if we may, what longtime means in either sense.

MR. LORY: The manual does not tell us.

THE COURT: In longtime operation it might mean just that, that it's operated over months and months and during this period perhaps bits of air might get into the system.

MR. LORY: If your Honor please, I object and I move to have the answer stricken. What this means is a question of fact for the jury.

THE COURT: I will strike this answer, but we have here an expert in this field and I take it that the manual is written for people to understand in the operation of this winch. This is addressed to winch operators and winch maintainers and ship engineers.

It's that sort

THE WITNESS: Yes, sir.

THE COURT: Now, does the term therefore, "longtime use," does that have a meaning to persons who operate, maintain or design winches in the sense that the Fukushima people are using it in this manual?

THE WITNESS: In the sense that they are using it here, your Honor, we first understand that this is written in Japanese and then translated by a Japanese gentleman into English. It's a rather strange English that they use anyway, but my understanding of this, my interpretation is that after the system has been in operation - it doesn't mean after you have run it for two hours or run it continuously, it just means after the system has been in operation for a long time, perhaps six months or whatever, that you will get these two handles coming out of phase.

A. NOW: If your Honor please, again I have no objection to strike. I think it's a question of fact for the jury to determine what this manual

THE COURT: I think we have here a man to whom, among others, this manual is addressed in the course of operations and I think his opinion is something that the jury might consider in determining what the

1 Oct. 48

2 language does mean. So I will deny your motion to
3 strike.

4 MR. LORY: May I have my exception, please.

5 THE COURT: Any further questions?

6 RE CROSS EXAMINATION

7 BY MR. COHEN:

8 Q Mr. Lory asked you a question as to whether
9 or not it isn't true that the movement of the winch
10 drum is controlled by the movement of the pilot valve;
11 is that correct?

12 A That is correct, yes.

13 Q And you answered him in the affirmative,
14 that it's controlled by the movement of the pilot valve,
15 is that right?

16 A Yes.

17 Q In turn, is not the movement of the pilot
18 valve controlled by the movement of the lever?

19 A Yes, sir.

20 Q And the movement of the lever is controlled
21 by the man operating the lever, is that correct?

22 A That is correct, sir.

23 Q In view of that fail-safe system that is
24 built in, if the man operating the lever should for any
25 reason at all take his hand off the lever, does that

1 Gps 10

Napolitano-recross

2 lever then itself move into the neutral or brake
3 position?

4 A Yes, sir, it should.

5 Q How long would it take for that lever to
6 respond to an absence of control?

7 A I would guess somewhere -- depending, of
8 course --

9 MR. LORY: Objection, your Honor. The
10 witness is now going to guess.

11 THE WITNESS: He is asking for an opinion.

12 THE COURT: Read the question back, please,
13 Mr. Greenspan.

14 (Question read.)

15 A Is this an opinion now?

16 Q I will ask you a preliminary question.

17 Are you able to tell us with a reasonable
18 degree of scientific certainty, how long it would take
19 that lever to respond to an absence of control?

20 MR. LORY: Objection, your Honor, this
21 witness has not dismantled the winch. He has not
22 operated the winch. It has been pure speculation.

23 MR. KAEN: If your Honor please, the witness
24 has been on board, examined it, read the manual, and I
25 think he is at least entitled to answer the question as

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to whether he is able to tell us.

THE COURT: Did you handle these controls at all?

THE WITNESS: Yes, sir, on my first visit and second one as well.

THE COURT: All right, go ahead.

THE WITNESS: That was one of the things I pointed out.

THE COURT: You may answer, sir.

A From what I observed -- and, of course, this is when I observed it, that might have been between a second, maybe a second and a half.

Q Assuming that a draft consisting of a heavy car had been raised from dockside to a point where it was now five or six feet over the ship's rail, and assuming that at that point the winch operator wanted to get that draft across the ship and started to play out slowly on the Burton winch and at the same time started to take in slowly on the up and down winch, and assuming further that as he started to pay out slowly on the Burton winch it ran away, and assume further that he then put the up and down winch into the full hoist position, and assume further the maximum speed at which the Burton winch could pay out, and assume

1 51
2 Further the maximum speed at which the up and down
3 winch could take in, could you tell us with a
4 reasonable degree of certainty approximately how long
5 it would have taken that draft if it embarked upon a
6 downward swooping motion from an initial height of
7 six feet over the ship's rail to reach the inshore
8 coaming of the hatch square at the number three hatch?

9 MR. LORY: I am going to object to that,
10 your Honor.

11 THE COURT: On what grounds?

12 MR. LORY: On the ground that the hypothetical
13 does not include the fact that the vehicle was stopped
14 over the square of the hatch.

15 THE COURT: Do you want to add that factor?

16 MR. COHEN: That was after, your Honor. What
17 I am trying to find out initially is how long it would
18 have taken that vehicle to go that path from a point
19 six feet over the ship's rail to a point over the
20 coaming. In other words, to cross over the deck area
21 between the railing and the coaming.

22 MR. LORY: Objection, your Honor. I think
23 it's pure speculation on the part of this witness.

24 MR. COHEN: I have asked him if he could tell
25 us with reasonable certainty. I don't think it's

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speculation at all, your Honor.

THE COURT: Can you state with reasonable certainty on these facts?

THE WITNESS: I can state the worst condition, which would be with the boom ---

MR. LORY: I will object to the worst condition, your Honor.

THE WITNESS: That is the most rapid descent.

MR. COHEN: I will take that.

THE COURT: Yes, I will allow it.

Q What would be the most rapid, or, in other words, what would be the shortest period of time under those conditions that I have asked you to assume that it would have taken that car to go from a point initially six feet over the ship's rail to the inshore coaming?

A The most rapid descent would occur when the two lines are at about 45 degrees; that is you have a 90 degree angle with 45 between, and that is when you would get the most rapid downward movement of your -- "shall we get into vectors, horizontal lines?"

Q So, what I am trying to get from you, if you are able to tell us, in terms of time what is the shortest period of time it could possibly take with these winches, knowing their maximum speed, both in the

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1 Cpa 53 Napolitano-recross 707
2 slacking and the hoisting position; what is the
3 shortest period of time it could possibly take for
4 an automobile to travel that route that I have
5 described starting from a point six feet above the
6 rail of the HUGUENOT until the time it reaches the inshore
7 coaming of the HUGUENOT?

8 MR. LORY: Objection, your Honor.

9 Q At the number three hatch.

10 MR. LORY: The witness has already testified
11 that without knowledge of the vectors involved with
12 respect to the angle of the up and down as opposed to
13 the angle of the Burton he could not do anything
14 but speculate as to the answer.

15 MR. COLLEN: I am asking the witness to
16 assume the vectors and an angle that would give this
17 the greatest possible speed.

18 MR. LORY: The objection still stands.

19 THE COURT: I will sustain the objection.

20 Q Approximately, Mr. Napolitano, what was the
21 distance between the rail of the HUGUENOT and its inshore
22 coaming at the number three hatch?

23 A As I recall it it's about 25 to 27 feet.

24 Q And the maximum speed at which the Burton
25 wind could pay out was how much?

Q. Now, Napolitano--across

A. Six feet per second.

Q. So that if the speed were measured by the maximum paying out of the Burton winch it would be six feet per second divided into that distance that it would have to go from the rail to the coaming?

A. Not really. You would not be swinging a train over on a straight line, it would be a **catenary** curve, but at any rate --

Q. On a **catenary** curve, would it take even longer, would it not?

A. Yes.

Q. I am trying to get the shortest possible distance and the shortest possible time so this jury has the understanding of the smallest time dimension.

MR. LOU: If your honor please, Mr. Cohen is asking this witness to speculate without foundation, without facts upon which the witness can base a conclusion that is reliable -- scientifically reliable and he is warring it followed by preliminary speeches and everything else, and I am objecting to it.

THE COURT: I think it has been established it's something less than six feet per second at any rate; is that correct?

MR. COHEN: Yes.

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THE COURT: All right, proceed.

THE WITNESS: Yes, sir.

THE COURT: That is pragmatically demonstrative,

is that not?

THE WITNESS: Yes.

THE COURT: You are trying to find out how
much faster it is than six feet per second?

THE WITNESS: If it can be.

THE COURT: If it can be. I gather it cannot
be more than six feet per second, even if the Burton line
fall was straight across the vessel; is that right?

THE WITNESS: Yes, sir.

Q As his honor has put it, the fastest
possible speed that that craft could go across the deck
would be at six feet per second with the Burton pulling
it straight across; is that correct?

A Yes, sir.

Q And six feet per second over an area of
25 to 27 feet; is that correct?

A That's correct.

Q And that would be the fastest?

A Yes.

Q At the time that the Burton had been pulling
it straight, is at the time the up and down was
motioning, would that diminish the speed or would it increase

Q. Now, if the draft is increased

the speed?

A. It would diminish the speed.

Q. So it would be something less than six feet per second?

A. In a horizontal movement, yes.

Q. Does that mean, then, that at its fastest possible, without any interference from the up and down motion, if the entire speed were controlled by the draft, going out at its maximum, it would take at least four seconds for that draft to traverse from the well to the corner?

MR. HOFF: Objection, your Honor.

THE COURT: I will sustain that objection. We don't need an expert to tell us that.

MR. COHEN: It's dividing six into --

THE COURT: I will sustain the objection.

MR. COHEN: May I have an instruction to the jury to disregard it?

THE COURT: Yes. They will disregard the last answer. I sustain the objection.

MR. COHEN: I believe there was testimony given the other day as to the maximum speed that the draft could draft.

THE COURT: Yes.

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Q Do you remember what that was?

A For that particular load --

Q Do you remember what it was, yes or no?

A Three feet per second.

Q Assuming that with the Barton paying out at the maximum of six feet per second, and assuming that the winch operator has testified that at that time he put the up and down in full hoist, which would mean it would be taking in at three feet per second, can you tell us under those circumstances what the maximum speed or the shortest period of time would have been for that draft coming across the deck from the rail to the coaming?

A Yes. About six and one half seconds.

Q It would take six and a half seconds?

A Approximately that.

MR. COMB: Thank you very much.

THE COURT: Any further questions?

MR. LOBE: No.

THE COURT: You may step down, sir.

(Witness excused.)

THE COURT: Ladies and gentlemen, we will adjourn this morning's session at this point.

(Court adjourns.)

(In open court, jury present.)

MR. KAHN: If your Honor please, I propose at this time to read in the deposition of Mr. Gous, the third officer, and of the bosun Matthee. With your Honor's permission I would like to put Mr. Molanphy on the stand to read the answers.

THE COURT: By all means. Go ahead.

MR. KAHN: Does your Honor have the original of the transcript? I'm sorry, I only have two copies of Mr. Matthee's. I would like to give it to Mr. Molanphy to read from.

THE COURT: I don't. I have one of Gous --

MR. KAHN: That's the one I am referring to.

THE COURT: You may have it.

Ladies and gentlemen, the procedure that we are about to embark upon is the presentation to you of the deposition of two witnesses on behalf of the vessel. You will recall my explanation to you of how these depositions are taken. Since neither of ^{are} the witnesses available, they may be read, and in order to be then more intelligible to you, Mr. Molanphy who is neither witness, will read the answers while Mr. Kahn asks the questions so that you get a better picture of the flow of the questions and then the answers as it comes in. Go ahead, sir.

1
2 MR. KAIN: If your Honor please, may I
3 for the record indicate that the time ~~that~~ this
4 deposition was taken, plaintiffs were represented
5 by Mr. Lory, Mr. Cohen represented the stevedore and I
6 represented the shipowner. Those were the three
7 appearances.

8 THE COURT: And the date of this was?

9 MR. KAIN: It was, if your Honor please,
10 taken at my office on the 26th day of October 1973,
11 commencing at 10:30 a.m. in the morning.

12 THE COURT: This first witness' deposition
13 is whose?

14 MR. MOLANPHY: Johan Gous.

15 MR. KAIN : There has been a small portion
16 of that read by Mr. Lory. If your Honor please, I
17 will skip a portion of it, if I may, but I would like to
18 repeat at least a small portion of it for the sake of
19 continuity.

20 THE COURT: You may.

21 MR. KAIN: Page 4, line 9.

22 "Q On November 24, 1968, by whom were you
23 employed, Mr. Gous?

24 "A By South African Marine Corporation.

25 "Q Were you employed aboard a ship on that date?

Gda 59A

"Gous"

"A Yes, sir.

"Q What ship were you employed aboard on
November 24, 1968?

"A S.A. HUGUENOT.

"Q What job did you have aboard the HUGUENOT?

"A Third officer.

"Q Do you remember approximately when you
joined the S.A. HUGUENOT?

"A June, 1968.

"Q And how long did you remain on board the
HUGUENOT? How many months?

"A Eleven and a half months.

"Q You were on board it on November 24, 1968;
is that correct?

"A Yes, sir.

"Q Mr. Gous, I show you these two pieces of
paper and ask you if you can, sir, to tell me what
they are.

"A It's a deck log of the S.A. HUGUENOT."

"Q Is it the entire deck log or is it a portion
of the deck log?

"A It's just a portion of it."

MR. KAIN: If your Honor please, these have
already been marked in evidence, these two pieces of

1 Gpa 60

2 paper. These are Plaintiff's Exhibit 1, consisting of the
3 log book for the 23rd and the 24th.

4 MR. KAIN: At the bottom of page 6, line 19.

5 "Q Mr. Gous, would you look at Defendant and
6 Third-Party Plaintiff Exhibits 1A and 1B for identifi-
7 cation and tell me if you can when the S.A. HUGUENOT
8 arrived in the port of New York?

9 "A 0728, on Saturday, the 23rd of November,
10 we tied up at Pier 6.

11 "Q 0728?

12 "A Yes, sir.

13 "Q That's Pier 6, where, Brooklyn?

14 "A Brooklyn.

15 "Q Did longshoremen work cargo aboard the
16 S.A. HUGUENOT on Saturday, the 23rd of November, 1968?

17 "A They did.

18 "Q What hours did they work?

19 "A They came on board on 800, on Saturday, and
20 stopped work for the day 1800.

21 "Q 1800?

22 "A Yes.

23 "Q Does your log book indicate what hatches
24 they worked?

25 "A They worked hatches 1, 2, 3, 4, 5 and 6.

1 "Q Did longshoremen also work cargo aboard
2 the S.A. HUGUENOT on Sunday, November 24, 1968?

3 "A Yes, sir.

4 "Q Would you tell me what hatches they worked
5 that day, if it is indicated in your log book?

6 "A 1, 2, 3, 4, 5 and 6.

7 "Q What hours did the longshoremen work on
8 that date, that is, the 24th of November, 1968?

9 "A 0800 in the morning to 2015.

10 "Q When did the ship sail from New York,
11 could you tell me, or from Pier 6 Port Authority?
12 When did they sail from there?

13 "A We left the berth 2201.

14 "Q That's Pier 6 you left at 2201?

15 "A Yes, sir.

16 "Q And for where was the ship bound?

17 "A Cape Town.

18 "Q South Africa?

19 "A Yes.

20 "Q Mr. Gous, I show you this document.
21 Would you look at it, please, sir, and tell me
22 if you can what it is.

23 "A The cargo plan of S.A. HUGUENOT, Voyage 10
24 southbound.
25

1 "Q Southbound means what, from where to
2
3 where, roughly?

4 "A That's going from the States to South Africa.

5 "Q Is that cargo stowage plan a record which
6 the ship is required to keep in the regular
7 course of the ship's business?

8 "A It is.

9 "Q And do you have any knowledge as to who
10 drew up this cargo plan?

11 "A This one was done by the longshoremen.

12 "Q When you say the longshoremen, you mean
13 the stevedores?

14 "A Yes."

15 MR. KAIN: I asked to have it marked for
16 identification at that time, your Honor. At this time
17 I offer it in evidence.

18 THE COURT: Mr. Lory, any objection?

19 MR. LORY: No.

20 THE COURT: It may be received.

21 (Defendant's Exhibit H received in
22 evidence.)

23 "Q Just you and the second mate stood cargo
24 watches?

25 "A That's right, yes.

1 Gpa 6QC

"Gous"

2 "Q Mr. Gous, I show you these two prints and
3 ask you if you can to tell me what they are.

4 "A This one is the general arrangement plan of
5 the S.A. HUGUENOT.

6 "Q Would you look at the other one and tell
7 me what that is?

8 "A This is a general arrangement plan, S.A. HUGUENOT.

9 "Q So both of these prints are general
10 arrangement plans, S.A. HUGUENOT?

11 "A Yes, sir.

12 "Q Would you look closely at those plans
13 and tell me whether those plans as shown represent
14 the arrangement of the S.A. HUGUENOT as it existed
15 on November 24, 1968?

16 "A These are.

17 "Q Is that the way the SOUTH AFRICAN HUGUENOT
18 was arranged, that that vessel was arranged on
19 November 24, 1968?

20 "A Yes, sir."

21 MR. KAIN: At that time, your Honor, I
22 offered them for identification and if there is no
23 objection I would like to offer both plans.

24 THE COURT: Is there any objection?

25 MR. LORY: No objection.

1 Gpa 61

2 THE COURT: They may be received.

3 (Defendant's Exhibit I received

4 in evidence.)

5 MR. KAIN: I am skipping now to line 15,
6 page 12.

7 "Q Mr. Gous, I show you these thirteen
8 photographs, photographs numbered 1 through 13.

9 Will you look through them, please, and
10 examine them and tell me, if you can, what they are
11 photographs of?

12 "A Of S.A. HUGUENOT.

13 "Q Are they photographs of any particular
14 area of the S.A. HUGUENOT?

15 "A Of number three hatch.

16 "Q Are those photographs a reasonable
17 facsimilie of the way the SOUTH AFRICAN HUGUENOT, No. 3
18 hatch looked on November 24, 1968?

19 "A Yes, sir.

20 "Q I am referring now to the arrangement
21 of the fixtures at the hatch as opposed to dunnage
22 on deck or cargo on deck; do you understand?

23 "A Yes, sir."

24 MR. KAIN: At that time, your Honor, I
25 marked them for identification and I would like to offer them

1 in evidence.

2
3 THE COURT: Any objection?

4 MR. LORY: No objection, provided that the
5 jury is told that they were photographs taken
6 subsequent to the date of the accident.

7 THE COURT: Mr. Kain, in connection
8 with this I take it you would concede that these
9 are taken subsequent to the date of the accident?

10 MR. KAIN: Yes, they were. A considerable
11 time. At least two years, but more than that, I
12 believe.

13 THE COURT: They may be received with that
14 observation.

15 MR. LORY: Your Honor, I recall
16 something. I must withdraw my consent as to
17 certain of these pictures, and I will point out the
18 ones.

19 I have no objection to these, your Honor,
20 I do have an objection to 4.

21 THE COURT: Let me see them.

22 Could we identify for the record the ones
23
24
25

1 that will be received? Let's get that done.

2
3 MR. LORY: A photograph bearing the number
4 9, number 7; this one is already in evidence, I see it's
5 number 6. Number 5, number 1, number 3, number 2
6 and number 1 are not opposed.

7 THE COURT: They may be received. Now let
8 me look at the balance.

9 MR. KATH: May we have a side bar on the
10 others, if your Honor please?

11 THE COURT: Sure.

12 (At the side bar.)

13 THE COURT: You are talking about 9, 10, 11,
14 12 and 13.

15 MR. LORY: Yes, your Honor.

16 THE COURT: 10 is already in evidence.

17 MR. LORY: Yes, sir.

18 MR. KATH: It's his objection, your Honor.

19 MR. LORY: My objections are to the figures
20 in the photographs.

21 THE COURT: I will reserve decision on
22 that.

23 MR. COMPT: There are two figures? Does
24 your offer include the figure or what?

25 MR. KATH: No. I only offer them to show

Gpa 63

the dimensions of the hatch and the fixtures of the hatch.

THE COURT: Leave these with me, I will reserve decision on them.

(In open court.)

(Defendant's Exhibits K through Q received in evidence.)

MR. KAIN: Line 19, page 13.

"Q Mr. Gous, I show you these still photographs, sir, and ask you if you can to tell me what they are photographs of.

"A This one is the pump room between No. 2 and 3 hatches, and this is a pump room.

"Q Are those photographs a fair representation of the hydraulic pump room between No. 2 and 3 hatch as it existed on November 24, 1968 on board the SOUTH AFRICAN HUGUENOT?

"A Yes, sir."

MR. KAIN: At that time, your Honor, I marked them for identification, and at this time, sir, I would like to offer them in evidence.

THE COURT: Any objection?

MR. LORY: No objection, your Honor.

THE COURT: They may be received.

(Defendant's Exhibits R and S received
in evidence.)

MR. KAIN: Page 14, line 12.

"Q Mr. Gous, I show you this photograph
and ask you if you can to tell me what it is.

"A This is hydraulic tank and hand pump for a
header tank.

"Q Is that photograph a fair representation
of the hand pump and header tank as it existed in
the pump room between No. 2 and 3 hatches of the
SOUTH AFRICAN HUGUENOT on November 24, 1968?

"A Yes, sir."

MR. KAIN: At that time, your Honor, I
marked them for identification and I would like at this
time to place it in evidence. It's already in, I
believe, sir, at Defendant's Exhibit F.

"Q Mr. Gous, would you look at this photograph,
sir, and if you can, please tell me what it is a
photograph of.

"A It's the remote controls of the winch system
aboard the S.A. HUGUENOT.

"Q Is that photograph a fair representation
of the remote controls for the forward winches at
No. 3 hatch of the S.A. HUGUENOT on November 24, 1968?

"A Yes, sir."

MR. KAIN: At that time, your Honor, I marked it for identification. I believe it's already in evidence. It's in evidence as Defendant's Exhibit B.

"Q Mr. Gous, I show you this photograph and ask you, if you can, sir, to tell me what it's a photograph of.

"A It's a photograph of a part of the foredeck of the S.A. HUGUENOT.

"Q Is there a mast house shown in that photograph?

"A Yes, sir. There is two here between No. 2 and 3 hatches and between No. 3 and 4.

"Q Is that photograph a fair representation of the mast house between No. 2 and 3 and 3 and 4, and that portion of the deck as it existed aboard the SOUTH AFRICAN HUGUENOT on November 24, 1968?

"A Yes, sir."

MR. KAIN: At that time, if your Honor please, I marked that photograph for identification and I would like to at this time, sir, offer it in evidence.

MR. LOFY: No objection, your Honor.

THE COURT: It may be received.

(Defendant's Exhibit T received in

evidence.)

"Q Mr. Gous, if you know, was there an accident involving a longshoreman aboard the SOUTH AFRICAN HUGUENOT on November 24, 1968?

"A Yes, sir. "

THE COURT: Mr. Lory: let the record show the witness is referring at this point to the log which is Defendant's Exhibit 1-B.

"Q Was this accident reported to you by anybody?

"A Yes, sir.

"Q Were you a witness to the accident, an eyewitness?

"A No, sir.

"Q Do you recall where you were at the time you first heard about this accident?

"A In the chief officer's office.

"Q Where on the ship is the chief officer's office located?

"A On the third deck up, starboard side, after end.

"Q In the ship's house?

"A In the accommodation.

"Q When it was reported to you, was there anybody else in the chief officer's office other than yourself?

"A The chief officer was present as well.

"Q And do you recall what you were doing at the time you heard about this accident?

"A Making out a free space report.

"Q Do you remember who reported the accident to you?

"A The cadet.

"Q Do you remember what the cadet's name was?

"A Allister Henry.

"Q Do you remember approximately what time of the day the accident was reported to you?

"A It was approximately twenty past seven.

"Mr. COHEN: That's P.M., right?

"MR. KAIN: Yes.

"Q That is P.M.?

"A Yes.

"Q In the evening?

"A Yes.

"Q Was it dark outside when it was reported?

In other words, was it after nightfall when the

1 Gpa 64C

"Gous"

2 accident was reported to you?

3 "A After sundown.

4 "Q When the accident was reported to you,
5 what did you do, if anything?

6 "A I went down on deck to No. 3 hatch.

7 "Q When you got down on deck to No. 3 hatch,
8 what did you do, if anything?

9 "A I tried to find out what exactly happened.

10 "Q Who did you ask what had happened?
11 Who did you talk to, in otherwords, when you were
12 trying to find out exactly what happened?

13 "A I spoke to the bosun and some of the
14 longshoremen.

15 "Q Did any of the longshoremen tell you what
16 happened?

17 "A The longshoremen refused to answer my questions.

18 "Q Did you go down into No. 3 hatch at all?

19 "A Not at that time, no, sir.

20 "Q Were you present when the injured
21 longshoreman was taken off the ship?

22 "A I saw him going off the ship, yes.

23 "Q Could you tell me by what means he was
24 taken off the ship?

25 "A He was on a tray taken off on the ship's derrick.

1 "Q Do you remember what derricks were used
2 to take the injured longshoreman off the ship?
3

4 "A No. 3 forward derrick.

5 "Q Do you remember who operated the winches
6 to control these derricks when the injured longshoreman
7 was taken off the ship?

8 "A It was done by a longshoreman.

9 "Q When the injured longshoreman was taken
10 off the ship, what booms were rigged at No. 3 hatch?

11 "A It was only the forward derricks were
12 rigged.

13 "Q Do you remember how many booms were situated
14 at No. 3 hatch aboard the S.A. HUGUENOT on November 24, 1968?

15 "A There was the two forward derricks, two after
16 derricks and a jumbo derrick.

17 "Q When you say derricks, you are referring
18 to the ship's cargo booms, are you?

19 "A Yes, sir.

20 "Q Do you remember the capacity of the
21 derricks at the forward end of No. 3 hatch aboard
22 the S.A. HUGUENOT on November 24, 1968?

23 "A Forward end?

24 "Q The forward end.

25 "A Five ton.

1 Gpa 64E

"Gous"

2 "Q What was the capacity of the jumbo derrick?

3 Incidentally, where was the jumbo derrick in
4 No. 3 hatch, at the forward end or the after end of
5 the hatch?

6 "A After end.

7 "Q Do you remember what the capacity of the
8 derrick at the after end was?

9 "A The jumbo was seventy-five.

10 "Q And how about the two other booms at the
11 after end of No. 3 hatch on November 24, 1968, what
12 was their capacity?

13 "A Fifteen ton.

14 "Q What time did you start to work on the
15 morning of November 24, 1968, Mr. Gous? What time
16 did you go to work that morning?

17 "A I went to work at 7:00 o'clock.

18 "Q You told us before you went to work on
19 cargo watch; is that correct?

20 "A Yes, sir.

21 "Q When you started to work, or when you
22 started on cargo watch at 7:00 A.M. on the morning
23 of November 24, 1968, for how long thereafter were
24 you on cargo watch?

25 "A Until 12:00 o'clock noon.

"Q Did there come a time when you went back on cargo watch?

"A Yes, sir. I went on again at 6:00 P.M.

"Q The same day?

"A Yes, sir.

"Q So if I understand your answer correctly, you had the cargo watch at the time this accident was reported to you; is that correct?

"A Correct.

"Q While you were on cargo watch on the morning of November 24, 1968, did you receive any complaints from the longshoremen about the condition of the winches at No. 3 hatch of the vessel?

"A No, sir.

"Q When you went down after this accident was reported to you and spoke to the longshoremen, did you receive any complaints from any of the longshoremen about the condition of the ship's winches at No. 3 hatch?

"A No, sir.

"Q Would you look at Defendant's Exhibit 1A and 1B for identification, if you need to refresh your recollection, and tell me at what time the SOUTH AFRICAN HUGUFNOT sailed from Pier 6 on the

1 Gpa 64G

"Gous"

2 evening of November 24, 1968?

3 "A 2201.

4 "Q When the SOUTH AFRICAN HUGUENOT sailed
5 from Brooklyn on the evening of November 24, 1968,
6 was the ship secured for sea?

7 "A Yes.

8 "Q Did you have any responsibility for seeing
9 that the ship was secured for sea prior to sailing?

10 "A Yes, sir.

11 "Q What was your responsibility in respect
12 to seeing that the ship was secured for sea? What
13 did you have to do?

14 "A See that the cargo is secured, hatches battened
15 down and all the derricks crotched.

16 "Q When you say crotched, you mean put in
17 their cradles?

18 "A Yes, sir.

19 "Q Did you make such a check before the
20 ship sailed that evening?

21 "A Yes.

22 "Q Did you report the results of your check
23 to anybody on the ship?

24 "A To the chief officer.

25 "Q In securing the ship for sea, what, if

1 Gpa 64H

2 anything, did you do with respect to the pump room
3 located between No. 2 and 3 hatch?

4 "A As soon as we have closed the hatch, derricks
5 are down, the pumps are switched off and all mast
6 houses are locked.

7 "Q On the evening of November 24, 1968
8 when the ship sailed from New York, were the mast
9 houses locked?

10 "A They were.

11 "Q Had anybody locked the mast houses at that
12 time?

13 "A I locked them myself, yes.

14 "Q You locked them yourself?

15 "A Yes, sir.

16 "Q Was the pump room separate and apart
17 from the mast house?

18 "A The pump rooms were inside the mast house.

19 "Q Was there anything else inside the mast
20 house other than the pump rooms?

21 "A No, sir.

22 "Q Were there any stores kept in the mast
23 house between No. 2 and No. 3 hatch?

24 "A No stores at all, no.

25 "Q Was this a standard practice aboard the

1 Gpa 64I

2 SOUTH AFRICAN HUGUENOT at that time to lock the pump
3 rooms when the vessel went to sea?

4 "A The pump rooms were kept locked all the time
5 on master's orders.

6 "Q When you say all the time, were they
7 unlocked to start the pumps when the cargo booms were
8 being worked?

9 "A We unlocked them to start the pumps, but
10 immediately locked them again even while the pumps
11 were running.

12 "Q Even while the pumps were running they
13 were re-locked?

14 "A Yes.

15 "Q After the ship sailed from Brooklyn on
16 November 24, 1968, did you receive any orders with
17 respect to the cargo winches at No. 3 hatch of
18 the SOUTH AFRICAN HUGUENOT?

19 "A Yes, sir. We got a telegram at sea to say
20 no repairs were to be done to the winches at No. 3
21 forward end.

22 "Q During the period while the ship was at
23 sea from the time she sailed from Pier 6, Port Authority,
24 Brooklyn, until she arrived in South Africa, was any
25 work done on the winches at No. 3 hatch?

"A No, sir.

"Q Who did you -- I'm speaking of you, yourself -- get your orders from that no work was to be done on the winches at No. 3 hatch?

"A The chief officer and the captain told me about that.

"Q Do you recall what your first port of call was in South Africa?

"A Cape Town.

"Q Do you remember approximately when the vessel arrived in Cape Town?

"A In December.

"Q 1968?

"A 1968.

"Q Do you remember the exact day she arrived?

"A No, sir.

"Q Do you recall what the approximate length of passage between New York and Cape Town was during the period that you were employed aboard the SOUTH AFRICAN HUGUENOT; about how many days did it take to make the run?

"A Plus or minus fourteen days.

"Q Plus or minus fourteen days?

"A Yes.

1 Gpa 64K

"Gous"

2 "Q When the SOUTH AFRICAN HUGUENOT arrived
3 in Cape Town, were the ship's winches used to
4 discharge the vessel?

5 "A No, sir.

6 "Q How was the vessel's cargo discharged in
7 Cape Town?

8 "A By shore cranes.

9 "Q To your personal knowledge, was anything
10 done with these winches when the vessel arrived in
11 Cape Town?

12 "A The winches are used for opening the hatches
13 and topping derricks.

14 "Q On this particular occasion, what, if
15 anything, was done with these winches when you arrived
16 in Cape Town?

17 "A The winches were used for opening hatches and
18 topping derricks, except No. 3 hatch we didn't touch.

19 "Q Why didn't you touch them?

20 "A We were under orders not to use them, repair
21 them, or anything.

22 "Q Was any inspection made of these winches
23 in Cape Town?

24 "A The winches were tested in Cape Town."
25

1
2 THE COURT: If your Honor please, at this
3 point I am going to object with respect to the
4 transcript.

5 THE COURT: I am to have a slide bar on that,
6 your Honor?

7 THE COURT: Yes.

8 (As the slide bar.)

9 THE COURT: Are you going to have a witness
10 that will competently say what he found or not?

11 THE COURT: No, sir. A witness was present
12 when the testimony was made. He knows the results and
13 the results of the testimony. I am to have a bar on the
14 transcript.

15 THE COURT: I believe a written report was
16 received and marked on the deposition.

17 THE COURT: If your Honor please, the
18 report and the witness' testimony with respect to
19 what was done is incompetent because the report in
20 and of itself, and neither does the witness testify
21 as to whether the testimony was conducted from the main
22 stations or operating controls or from the remote.
23 On that basis plaintiff objects to it or any reference
24 to it.

25 THE COURT: Read back Mr. Mary's objection

1 here so I understand it.

2
3 MR. LORY: I am going ahead with what we
4 have here, your Honor.

5 THE COURT: I know.

6 Mr. Lory, just so I understand, your
7 objection is on the ground that the report does not
8 show where the operator who tested the winches was
9 stationed at the time the test was made; that's the
10 basis for your objection?

11 MR. LORY: The report does not set forth
12 whether the controls on the winches were tested via
13 the controls at the main station or via the controls
14 at the remote station.

15 THE COURT: Other than that you have no
16 objection?

17 MR. LORY: The witness can testify as to what
18 he saw, I cannot dispute this, but based upon the fact
19 it would be based on his conclusions, which are
20 nothing more than hearsay, since he did not prepare the
21 report, of course I must continue the objection.

22 I also call to your Honor's attention the
23 fact that while the pump rooms or houses between the
24 hatches were kept locked, since our contention is
25 that there was a problem with something that could have been

connected at the control station, the fact that they were locked is also of no significance.

THE COURT: Mr. Kain, assuming there is nothing else I think Mr. Lory's objection is unfortunately well taken; that this is not competently established on this record.

MR. KAIN: I am referring now to his testimony that he was present and witnessed the test.

THE COURT: If he is unable to say, he is not able to --

MR. COMPTON: Isn't this objection premature at this time? The question Mr. Kain is up to really has the witness --

THE COURT: I know, but if he is not going to be able to say anything other than there was a test, I don't think it's appropriate for the jury to speculate.

MR. COMPTON: But if he was present and saw the test, could he not tell the result of it? It's a physical test.

MR. LORNE: He can't say conclusions.

THE COURT: He said they did not find any mistake or fault. That's his answer.

MR. KAIN: I think he was asked subsequently.

Gpa 69

"Gous"

the one, sir, that has the overlay upon it. I will instruct the jury at an appropriate time that the figure standing there has no relationship whatsoever to this case.

MR. LORY: May I have an exception with that ruling, your Honor? I think the presence of figure there is prejudicial.

THE COURT: Mr. Lory, Exhibit A which went into evidence also has the same gentleman standing by hatch coaming. I feel that in my discretion that under proper instructions the jury can consider Exhibit 13 similarly and I think it appropriate to have the measurements which accompany that, but in my discretion, given your objection, I will exclude 9, 11 and 12.

(Defendant's Exhibit U received in evidence.)

THE COURT: For the record, Mr. Dorset, will you mark 9, 11, and 12 for identification only.

(Defendant's Exhibits V, W and X marked for identification.

MR. KAIN: Page 29, line 11.

"Q Mr. Gous, when you, on the evening of November 24, 1968, when this accident was reported to you and you went forward to No. 3 hatch, when you

1 got to No. 3 hatch, was there any cargo on the
2 cargo hook for the forward booms at No. 3 hatch?

3 "A No, sir."

4 MR. KAIN: Then I said, "I have no further
5 questions," and I followed that immediately with, "I'm
6 sorry, let me ask you this."

7 "Q When you were on cargo watch, the officer
8 on cargo watch, would complaints concerning any defect
9 or any trouble with the winches usually come to your
10 attention?

11 "A Yes, sir."

12 MR. KAIN: I had no further questions at
13 that time, your Honor.

14 THE COURT: You may reserve this other
15 subject, Mr. Kain.

16 MR. KAIN: I am assuming perhaps Mr. Cohen
17 or Mr. Lory wish to read parts of their cross
18 examination.

19 THE COURT: Yes, but I said as part of
20 your direct you may reserve this other subject.

21 MR. KAIN: Yes.

22 THE COURT: Mr. Lory?

23 MR. LORY: I must confess, your
24 Honor, I will need a moment to go through this, if I
25

1 may have it.

2
3 THE COURT: Why don't both you and Mr. Cohen
4 reserve your reading to the extent you desire it until
5 after our luncheon recess and, Mr. Kain, why don't
6 you proceed with your reading as direct testimony of
7 the other depositions.

8 MR. KAIN: I can do that, your Honor, except
9 for the continuity. You mean the remainder of what I may
10 have asked following their cross examination?
11 I have some doubts as to the continuity.

12 THE COURT: Then let us recess for lunch.

13 Ladies and gentlemen, we will resume at ten
14 minutes of two.

15 (Luncheon recess taken.)

16 *

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17 AFTERNOON SESSION

18 2:00 p.m.

19 (In open court, jury present.)

20 MR. COHEN: Your Honor, Mr. Lory asked
21 questions after Mr. Kain. I understand he doesn't wish
22 to read his, except for those portions he already read,
23 but I had some questions of the witness that I would
24 like to read, if I may.

25 THE COURT: Go ahead.

1 Gpa 71A

"Gous"

2 MR. LORY: If your Honor please, I could still
3 speak for myself.

4 MR. COHEN: I'm sorry.

5 These questions start on page 43, line 14.

6 "Q There were some pictures, I think the
7 thirteen photographs, Exhibit 4A through M, that
8 showed the coaming at the No. 3 main deck.

9 Is this a photograph which shows the coaming
10 at No. 3 main deck?

11 "A Yes, sir.

12 "Q I am referring to photograph 4B, Exhibit 4.
13 Can you tell us, looking at this photograph,
14 approximately how high that coaming is?

15 "A Well, just over four feet."

16 MR. COHEN: Your Honor, I don't know what
17 number has been given that Exhibit 4-B for identification
18 on that deposition on this trial. I wonder if we may
19 just stop a moment and find out.

20 MR. LORY: Why don't we look at the
21 excluded ones and it may be faster.

22 It does not appear to be an excluded
23 photograph.

24 MR. COHEN: Is 4-L there?

25 MR. LORY: That is here.

1
2 MR. COHEN: Could you take it out for a
3 moment, that will be next.

4 MR. LORY: It's excluded.

5 MR. COHEN: All right, but could you take
6 it out for a moment.

7 If your Honor please, Exhibit 4-B that
8 was marked for identification in that deposition is
9 in evidence in this case as Defendant's Exhibit L.

10 "Q Let me show you --"

11 MR. LORY: Objection, your Honor, it's
12 already excluded.

13 THE COURT: 4-L?

14 MR. LORY: It's one of the excluded
15 photographs.

16 THE COURT: May I finish with the question
17 and answer? He interrupts in the middle of a question.
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1 cpa 73

2 I have a right to offer testimony which may be different
3 from the testimony initially made.

4 THE COURT: I am not sure what the problem
5 is. You are re-offering a photograph --

6 MR. COHEN: I am not re-offering anything.
7 I am reading a question made deposition and he hasn't
8 let me finish the question.

9 THE COURT: Let me look at it.

10 MR. COHEN: It's the question at line 24,
11 page 42, your Honor.

12 THE COURT: Yes, I will sustain the
13 objection.

14 MR. COHEN: May I read the question after
15 that, your Honor?

16 MR. LORY: I object to that one, your
17 Honor.

18 THE COURT: This is the question on line 24?

19 MR. COHEN: No, that's the one that I
20 wanted to read now that Mr. Lory just objected to.

21 THE COURT: All right.

22 MR. LORY: Then we go to the question on
23 line 4 of page 44 and I object to that.

24 THE COURT: Yes, I sustain that objection.

25 MR. COHEN: May I read the next question,

which in on line 10, your Honor, at page 44?

THE COURT: Yes. Is there some way we can tie that into a photograph that is in fact in evidence?

MR. KAIN: Yes, your Honor, I believe so.

THE COURT: Could you and counsel agree on some photograph in which that ladder is shown?

MR. KAIN: Defendant's Exhibit A shows it.

MR. COHEN: This one, Exhibit L in evidence shows the ladder and the coaming.

THE COURT: May it be stipulated that's the same ladder he is speaking about on page 44, line 9?

MR. LORY: Yes, your Honor.

THE COURT: All right, go ahead.

MR. COHEN: Line 10, page 44.

I am going to point out the ladder that he is talking about.

THE COURT: By all means.

"Q What is the purpose of that ladder?

"A That's for when we close the MacGregors to climb up on top of it and knock the wedges in.

"Q The coaming is so high that it requires a ladder for a man to climb up in order to close the MacGregor hatches; is that right?

"A Close the wedges on top, yes.

Gpa 74A

"Q At the time that this accident took place, were they loading cargo into the No. 3 hatch?

"A Yes, sir.

"Q To what deck level?

"A The upper 'tween deck.

"Q Does the upper 'tween deck show up in this photograph which is Exhibit 4E?

"A Yes, sir.

"MR. COHEN: Is there a crayon you have?

"Q Is the upper 'tween deck the first deck below the main deck in this photograph?

"A Yes, sir.

"Q When they are loading cargo into the upper 'tween deck, is the opening into the holds below that closed?

"A Yes, sir.

"Q So that at the time of this accident, you wouldn't be able to see down into the lower hold as you can do in this photograph, Exhibit 4E; is that right?

"A That's right.

"Q Can you tell me approximately, or accurately if you can by referring to anything here, what the distance from the top of the main deck coaming down

1 to the upper 'tween deck would be?

2 "A Approximately fifteen feet.

3 "Q That includes the four feet coaming at
4 the main deck, does it?

5 "A Yes.

6 "Q When you arrived at the scene of the
7 accident, was the injured man still in the hold?

8 "A No, sir.

9 "Q Where exactly was he?

10 "A He was just going across being taken out.

11 "Q He was on the pieplate or stretcher
12 apparatus? He was on the tray that was taking him
13 out when you arrived there; is that correct?

14 "A Yes, sir.

15 "Q Were you shown where his body had been?

16 "A No, sir.

17 "Q Now, in addition to the longshoremen
18 who were working aboard the ship at the time, were
19 there also carpenters?

20 "A Yes, sir.

21 "Q And they were employed by different
22 companies; is that correct?

23 "A I don't know who.

24 "Q Do you know the name of the company that
25

1 employed the longshoremen?

2 "A No, sir.

3 "Q Do you know the name of the company that
4 employed the carpenters?

5 "A No, sir.

6 "Q Do you know when it was that the carpenters
7 first came aboard?

8 "A They would have come aboard on the 23rd.

9 "Q At what time?

10 "A I don't know the time.

11 "Q What work would the carpenters have in
12 the kind of operation that was going on?

13 "MR. KAIN: May we fix the time, what
14 time, what operation?

15 "MR. COHEN: On the 23rd and 24th.

16 "A Securing cargo.

17 "Q Specifically with regard to the No. 3
18 hatch, what kind of cargo would they be securing on
19 those two days?

20 "A Machinery, container, tractors and motor cars.

21 "Q As you made your rounds on those two days,
22 you had occasion to observe carpenters doing their
23 work in the No. 3 hatch, did you?

24 "A Yes, sir.

1 "Q Can you tell us generally what they do
2 and how they do it?
3

4 "A Containers, for instance, will be lashed with
5 wires into hooks set in the ship's bulkhead.

6 Motor cars is done by putting dunnage around
7 it in front and behind the wheels."

8 MR. LORY: If your Honor please, I
9 object to the next question since the witness
10 testified that he is not present.

11 MR. COHEN: If your Honor please, he
12 testified this wasn't the first one. He loaded motor
13 cars.

14 MR. LORY: Your Honor, since it's already in
15 the record as to what was going on, I will withdraw it.

16 THE COURT: I was going to say I saw no
17 prejudice by allowing it. Go ahead, sir.

18 "Q At the time of this accident, was the cargo
19 being loaded containers or motor cars?

20 "A Motor cars.

21 "Q And the work required of the carpenters
22 in connection with the securing of motor cars
23 required them to use wood or lumber?

24 "A Yes, sir.

25 "Q And can you tell us from what you observed

1 Gpa 75A

2 the approximate dimensions of the kinds of lumber
3 that you saw them using?

4 "A Rectangular shaped six to twelve feet pieces,
5 three by four and four by six.

6 "Q They might be as long as twelve feet?

7 "A Yes, sir.

8 "Q Possibly longer?

9 "A Could be longer, yes.

10 "Q How did they get that lumber down into the
11 upper 'tween deck where they were working?

12 "A It was passed down there.

13 "Q By hand?

14 "A Yes.

15 "Q Can you explain to us how they did that?

16 MR. LORY: If your Honor please, at this
17 particular point I will object to any leading question.
18 Mr. Cohen is not going into matters covered
19 on direct. He is taking this witness over on his own
20 and leading questions are objected to on that
21 particular basis.

22 MR. COHEN: Your Honor, rather than make
23 speeches in front of the jury, may we approach you at
24 the side bar?

25 THE COURT: Please do.

1 Gpa 75Aa

2 (At the side bar.)

3 THE COURT: Yes.

4 MR. COHEN: Firstly, I don't understand his
5 objection, which I don't think is well taken. In any
6 event, in connection with the question asked, but
7 secondly what I ask your Honor to keep in mind is there
8 is a case by this shipowner against my client and my
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1 Gpa 76

2 client's position in this lawsuit, as I explained to
3 the jury, or attempted to in my opening, is that this
4 accident was caused by a carpenter dropping a piece of
5 lumber on top of Mr. Iannuzzi from the deck above and
6 I have a right to attempt to prove my client's position
7 in this case through the mouth of the ship owner's own
8 witnesses and it doesn't mean I make them my own people
9 or can't lead them or anything else.

10 THE COURT: Let me say this. I think at
11 the time you used this it was perhaps more properly
12 your own case, but I am going to overlook that and I
13 think I will allow you to do it at this time.

14 MR. Lory, the problem I see is that in
15 the preamble -- and you are the very gentleman who were
16 there then and are before me today, so you three are
17 no strangers to each other -- you stipulated that you
18 would make all objections to form. Now, the objection
19 the question is leading is an objection to form and I
20 don't see any objection on your part to the form of
21 these questions.

22 MR. LORY: There are later objections, your
23 Honor.

24 THE COURT: I know, but I am only going on
25 this now.

1 Gpe 77

2 MR. LORY: There are later objections with
3 respect to the procedure that was followed, but we are
4 talking here of a matter of tactics, not just a matter
5 of form. Form would be related to an individual
6 question. Mr. Cohen has gone outside the scope of the
7 direct examination, so, therefore, he is making him his
8 own witness for whatever purposes on
9 defending his case against the shipowner or not.

10 THE COURT: Why should that exclude evidence
11 otherwise admissible?

12 MR. LORY: I don't think it's admissible, your
13 Honor.

14 THE COURT: In what respect?

15 MR. LORY: It's not admissible for the
16 simple reason that he has gone outside the scope of
17 the direct examination and if he makes him his own
18 witness as to this question, then it has got to be
19 of the when, where and why form as opposed to leading
20 questions.

21 THE COURT: Even assuming you were
22 right about that, the time of the raising of that
23 objection was at the taking of the deposition.

24 MR. COHEN: In fact on the record when I
25 asked if I could lead him there you didn't say you

1 Gpa 72

2 objected to it.

3 MR. LORY: You asked Mr. Kain and I didn't
4 consent.

5 MR. COHEN: You were there, Eddie. I asked
6 everybody.

7 MR. KAIN: Aren't you entitled to lead him
8 on the third party?

9 MR. COHEN: Of course I am.

10 THE COURT: In any event, whether or not this
11 is outside the scope of this direct I will permit you to
12 put it in at this time since it's only a question
13 of whether it's today or tomorrow and on the question
14 of objections, the question of the leading character
15 of the questions, this was something that I rule
16 should have been done at the time of the deposition, at
17 which time I think it would have been well taken, but
18 I don't think you can raise it now when you didn't raise
19 it at the time.

20 MR. COHEN: Had he raised it at the time,
21 I would have withdrawn.

22 MR. LORY: While we are here at the time,
23 so we don't have to make another trip, will you please
24 go to page 50. There Mr. Cohen makes some reference
25 to some photographs which he has marked, and if your Honor

1 Gpa 79

2 will turn also to page 53 --

3 MR. COHEN: Your Honor, can we do this one
4 question at a time?

5 THE COURT: This has nothing to do with the
6 leading quality of the questions.

7 MR. LORY: I am trying to avoid further
8 delay.

9 THE COURT: Okay.

10 (In open court.)

11 MR. COHEN: Continuing on page 48, line 20.

12 "Q Can you explain to us how they did that?

13 "MR. COHEN: May I lead him?

14 "MR. KAIN: It's cross examination.

15 I assume you can lead him.

16 "Q In other words, was there a carpenter who
17 stood on the main deck who passed a piece of this
18 lumber down with his hands to another man who was
19 on the upper 'tween deck who would receive it in his
20 hands?

21 "A Yes, sir.

22 "Q And the carpenter on the main deck
23 who passed this lumber down, where would he in
24 turn be getting it from?

25 "A On deck there.

Gpa 79A

"Gous"

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2

"Q How did the lumber come to be on the deck?

3

"A Well, to the best of my recollection, it was

4

brought on board with the ship's derricks.

5

"Q That would be at the beginning of the

6

operation, I assume?

7

"A Yes, sir.

8

"Q Then as they need it, the carpenters

9

would have a man on the deck pass it down piece by

10

piece to a man on the deck below?

11

"A Yes, sir.

12

"Q And the lumber that was on the deck, was

13

that on the in-shore side or the off-shore side?

14

"A It would be in-shore side.

15

"Q And the carpenter who was standing on

16

the deck passing it down, would he be standing on

17

the in-shore side?

18

"A Yes, sir.

19

"MR. KAIN: Off the record.

20

"(Discussion off the record.)"

21

"MR. COHEN: May we have these two

22

photographs marked for identification, please?"

23

MR. LORY: Objection, your Honor.

24

MR. COHEN: Two photographs were marked for

25

identification and I ask if I may have them now.

THE COURT: Are they in evidence?

MR. LORY: No.

THE COURT: Were they among those that were marked at all?

MR. LORY: No, sir.

MR. COHEN: No, sir, these were marked as Exhibits A and B for identification on that date, your Honor.

THE COURT: Mr. Cohen, are you going to have

1 Gpa 80

2 further reference to them?

3 MR. COHEN: Yes, right now.

4 MR. LORY: May we have a ruling on the
5 photographs as to whether they are admissible, please,
6 your Honor?

7 MR. COHEN: Judge, can't I ask the question?

8 THE COURT: He is laying a foundation
9 for their admissibility.

10 MR. LORY: No, your Honor.

11 MR. COHEN: Judge, if I can't ask the question
12 before we get an objection I don't know how we can
13 proceed.

14 THE COURT: The problem is being a deposition
15 the ability to object is increased geometrically.

16 (At the side bar.)

17 THE COURT: I will allow them and I will
18 give an instruction to the jury that these are
19 being merely allowed to show how cars were chocked on
20 the S.S. HUCUENOT.

21 MR. LORY: The actual matter of chocking
22 has nothing to do with this case -- it is irrelevant --
23 in any manner, shape, or form.

24 MR. COHEN: That's what you say.

25 MR. LORY: According to Mr. Cohen's

Gpa 81

contentions, it's the lumber that is involved, not the chocking.

THE COURT: But it's a question of the legitimacy of the lumber being there and its use in going down that hold, I take it, and he is trying to show where it's going to end up.

MR. LORY: Nothing is being disputed that it's with respect to cars that they were being chocked with lumber.

THE COURT: Mr. Cohen, I take it you have some direct testimony with regard to your theory of this case?

MR. COHEN: If your Honor please, there is documentary proof in the medical examiner's report; there is the aided card of the New York City patrolman who responded and who testified that a carpenter named Joseph Andre, whose address and phone number he lists on the report, told him he dropped the lumber. I have him here. I subpoenaed him a number of days ago and your Honor directed him to be here.

THE COURT: Yes. I will allow it for that limited purpose. I will tell the jury that these were not the cars on that day.

MR. KAHN: They are in a different hatch, your Honor.

1 GOS 62

2 MR. LORY: Were they?

3 MR. KAIN: I believe that the cars are in
4 number 4 hatch in that photograph.

5 THE COURT: But this is illustrative of
6 the chocking of cars on that vessel at that time.

7 MR. KAIN: May we note for the record, your
8 Honor, I think on additional ground for allowing this
9 question of lumber in, in which the fact that the two
10 longshoremen, as I recall it the gangway man and the
11 winch operator, both stated they saw no carpenters working
12 on deck or passing down lumber. I think that's their
13 testimony.

14 MR. COMET: I am just offering this
15 for illustrative purposes.

16 THE COURT: I will allow it for that.

17 MR. LORY: Will your Honor also tell this
18 jury that as far as lumber is concerned, Mr. Gous has
19 not stated a time or date. He is responding to general
20 questions what do carpenters do.

21 THE COURT: I assume there was no dispute
22 on the taking of this deposition that it was the
23 practice at that time. I take it neither you nor
24 Mr. Comet nor anybody else raised an objection that it
25 was not the practice at that time.

Gpa 83

"Gous"

MR. LORY: Your Honor, I concede that they use lumber to chock cars.

THE COURT: All right.

Incidentally, Mr. Lory, while I have you here, do you want me to give an instruction to the jury about the man standing in that one picture that I let him?

MR. LORY: I would appreciate it, your Honor.

THE COURT: Should I do that at the same time as I make this one?

MR. LORY: Yes.

(In open court.)

THE COURT: Go ahead, Mr. Cohen.

MR. COHEN: Page 51, line 7.

"Q Let me show you, Mr. Gous, these two photographs which have just been marked as Third-Party Defendant's Exhibits A and B for identification.

Can you tell us, do they show motor vehicles that have been chocked by carpenters?

"A Yes, they do.

"Q And do they show the kind of chocking work done by carpenters to the motor vehicles that were loaded into the No. 3 hatch of the HUGUENOT on November 24, 1968?

1 Gpa 83A

"Gous"

2 "MR. LORY: Objection. There is nothing
3 in the record to indicate these are photographs of
4 vehicles in the No. 3 hatch.

5 "MR. COHEN: I didn't say they were. I
6 asked if they show the kind of chocking work done in
7 the No. 3 hatch. I didn't say this was the No. 3 hatch.

8 "MR. LORY: That would vary as to the type
9 and construction of the automobile.

10 "MR. COHEN: Can't I get an answer
11 from the witness, then, because you weren't there? I
12 am asking him if this shows the kind of chocking work
13 done on the cars taken into the No. 3 hatch.

14 "A Yes, sir."

15 MR. LORY: Objection, your Honor, this
16 witness is not competent to testify to that. He was
17 not there. We are now back to number 3 hatch.

18 THE COURT: Mr. Gous was the third officer
19 of the vessel.

20 MR. COHEN: Chief officer.

21 MR. KAIN: Third officer, your Honor, who
22 stood cargo watch at the time of the accident.
23
24
25

1 Goa 81

2 THE COURT: And I take it had come up from
3 South Africa and had gone back a number of times.
4 Therefore, I am sure he was competent to say what the
5 practice was with regard to chocking cars in November of
6 '69. Go ahead, overruled.

7 MR. COHEN: May I offer these two photographs
8 in evidence, then, your Honor, with the understanding
9 that I offer them solely for illustrative purposes so the
10 jury will understand how an automobile was chocked.

11 THE COURT: I will allow them for that
12 limited purpose and I will so instruct the jury when
13 they are marked.

14 (Third-Party Defendant's Exhibits Y and
15 Z received in evidence.)

16 THE COURT: Ladies and gentlemen, there are
17 three photographs that I wish to speak to you about.
18 The two photographs that have just been marked in
19 evidence show lumber around cars to secure them during
20 the voyage. The photographs are apparently in the number
21 four hold of the HUGUENOT rather than the three, but
22 whether or not that is so, the photographs are solely
23 for your consideration to see how the chocking is done.
24 This does not purport to be this voyage; it does not
25 purport to be any car that was chocked on this voyage.

1 GSA 25
2 It's solely meant to show what is meant by chocking with
3 the lumber.

4 While I am discussing photographs, I admitted
5 into evidence an Exhibit U. That is an exhibit of the
6 coaming of the number 3 hatch and that happens to have
7 a man standing on the platform. These pictures were
8 taken, allegedly, sometime after the accident. The
9 man serves no purpose whatsoever in this photograph and
10 just happens to be standing there. You are not to give
11 any consideration whatsoever to the figure, in fact,
12 you are to disregard the figure. It's to show the
13 arrangement of the hatch, the location of the winches above
14 it, the supports, the existence of the platform and
15 there will go into evidence by stipulation an overlay --
16 actually I would assume that these overlays are already
17 in evidence under our stipulation of last week.

18 MR. KAIN: That is correct, your Honor, yes.

19 THE COURT: In which a draftsman has written
20 distances in pen and ink on the overlay which goes
21 above it. But in any event you are to disregard the
22 figure which is representation of nothing at all.

23 MR. COHEN: May I show those two photographs
24 to the jury, your Honor?

25 THE COURT: You may.

(Exhibits shown to the jury.)

MR. COHEN: On line 10, page 53.

"Q Do I understand that these photographs do show the kind of chocking work that the carpenters did in the No. 3 hatch of the HUGUENOT on November 24, 1968, right?

"A Yes, sir.

"Q In these two photographs, Exhibits A and B of the Third-Party Defendant, there are pieces of lumber surrounding the perimeters of the automobiles; is that correct?

"A Yes, sir.

"Q Did the carpenters who secured automobiles in the No. 3 hatch of the HUGUENOT on November 24, 1968 use similar lengths of lumber?

"A Yes, sir.

"Q And when their work was done, did the securing of the cars result in a wooden configuration of lumber that resembled that shown in these photographs?

Do you understand my question?

"A No.

"Q When carpenters chock automobiles, do they have lengths of lumber lying alongside the

1 automobile on both sides running fore and aft,
2 from front to back end?

3 "A The length of the --

4 "Q Of the automobile.

5 "A Yes, sir.

6 "Q Then do they also have horizontal pieces
7 of lumber running behind the rear wheels and in front
8 of the front wheels going across the automobile?

9 "A Yes, sir.

10 "Q And that is essentially what you see in
11 these photographs, Exhibits A and B of the Third-Party
12 Defendant, right?

13 "A Yes, sir.

14 "MR. KAIN: May I state in response
15 to Mr. Lory's question off the record, just to
16 clear up the question, I believe those photographs
17 are photographs of the car stowage in the upper
18 'tween deck of No. 4 hatch of the SOUTH AFRICAN
19 HUGUENOT for the voyage we are talking about."

20 "Q Now, the accident was reported to you
21 while you were in the chief officer's office; is that
22 correct?

23 "A Yes, sir.

24 "Q At that time you were the officer on watch?
25

1 "A Yes, sir.

2 "Q As the officer on watch, is it your
3 duty to receive reports of accident?
4

5 "A Yes, sir.

6 "Q Was it part of Cadet Henry's duty to
7 report an accident to you?

8 "A No, sir.

9 "Q How did he come to report it to you?

10 "A He saw it and then went looking for me. He
11 didn't see it occur.

12 "Q As a cadet on the vessel, when he becomes
13 aware that an accident has happened, is he supposed to
14 report it to the officer on watch?

15 "A Yes, if I am not -- if somebody else hasn't
16 done so yet.

17 "Q In other words, somebody should report
18 it to the officer on watch when they become aware
19 of an accident, right?

20 "A Yes, sir.

21 "Q Can you tell me exactly what it was that
22 Cadet Henry said to you, if you can recall?

23 "MR. LORY: I am going to object to that.
24 Unless, of course he would know that Cadet Henry
25 was an eyewitness.

"MR. COHEN: I hear your objection. Now

I would like to get an answer."

MR. LORY: Objection, although it's immaterial because the answer is, "No, I can't recall."

MR. COHEN: If he is going to read the answer, why does he object to my doing it?

THE COURT: Go ahead, read the answer.

"A No, I can't recall exactly what he said.

"Q Do you recall the substance of what he said?"

MR. LORY: That I will object to.

THE COURT: Well, Mr. Lory, I don't think this will hurt either, but I will sustain your objection.

"A It would be that there has been an accident in hatch number so-and-so, and I must get down there.

"Q Did he tell you what hatch the accident happened in?

"A Yes, sir.

"Q Did he tell you it was hatch No. 3?

"A Yes, sir.

"Q Did he tell you anything else about how the accident happened?

"A No, sir.

"Q When you are the officer on watch and an accident is reported to you, is it then part of

1 your job duty to go down and investigate as to
2 what happened?

3 "A Yes, sir.

4 "Q Did you do your job duty and go down
5 to investigate?

6 "A Yes, sir.

7 "Q If I recall your answer to Mr. Kain's
8 question, when you went down to the No. 3 hatch,
9 you tried to find out what had occurred by asking
10 both the longshoremen and the bosun; is that correct?

11 "A Yes, sir.

12 "Q And that's part of your job and proper
13 for you to do, is it not?

14 "A Yes, sir.

15 "Q And do I understand that none of the
16 longshoremen would talk to you or answer your questions?

17 "A No, they wouldn't answer questions at all.

18 "Q Did you talk to the busun about the
19 accident?

20 "A Yes, sir.

21 "Q What did the bosun report to you?"

22 MR. LORY: Objection.

23 MR. COHEN: If your Honor is inclined to
24 sustain that objection, I would like to have a short
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1
2 conference at the side bar.

3 THE COURT: Yes, come to the side bar, if
4 you will.

5 (At the side bar.)

6 THE COURT: Mr. Cohen, isn't this
7 absolutely clear hearsay?

8 MR. COHEN: No, sir, certainly not. And
9 certainly not in relation to the ship's case against my
10 client. This is a report made to the officer on watch who
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Gpa 87

has testified that it was his job duty to receive reports of accidents. It was a report made to him by the ship's boatswain and I have a right to develop those facts in defense of the ship's action against my client as to what these people, the ship's owner personally knew of this accident.

MR. KAIN: It may be clarified somewhat, your Honor, by the fact that the boatswain has also testified by deposition.

THE COURT: Then let's use his testimony, but not use this. It's absolutely hearsay. I don't see this as a business entry rule. It may be the boatswain's job to report these things, but it doesn't become a business entry if he doesn't put it down on a piece of paper in the regular course of business.

MR. LORY: He already has, your Honor, in the log.

MR. COMEN: What I am saying is that the ship's claim against my client is essentially that a stowaway operation wasn't performed in some respects and that caused the accident. Our position is and always has been that the shipowner knew better; it's own personnel knew better; that this accident was immediately reported to the ship's personnel, who

1 Gpa 33

2 reported it to their own hierarchy.

3 THE COURT: Wait a minute. I think I
4 understand your point. What you are saying is that as
5 far as you are concerned, this is not hearsay, this is
6 an admission against interests, right?

7 MR. COHEN: Right. Insofar as the ship's
8 claim against my client is concerned.

9 THE COURT: I now appreciate your point.

10 MR. LORY: If your Honor please, I think that
11 should be reserved until the case offer and not mine.

12 THE COURT: I think in this case Mr. Lory
13 is right. I think he is right in that this is part of
14 your case as between you and the vessel.

15 MR. COHEN: But we have been trying the entire
16 case altogether.

17 THE COURT: I know, but I frankly see a
18 little bit of difference here because I am admitting
19 this on the theory that this is a -- well, let me put
20 it another way. I did not see the clear distinction
21 as to where a matter came in than the time before when
22 I said go ahead and put it in now. I think there is a
23 distinction here. I think it should be part of your case
24 against the vessel and not be as part of your case
25 against the vessel as an admission against interests,
so let me give consideration to that.

Gpa 89

I will allow you to get into this area, unless I see any reason not to, but I think you should do this during your own case, and if you want to back up during your own case to put it in some kind of focus I will permit you to do it.

MR. COHEN: In other words, read it tomorrow instead of today.

THE COURT: That's exactly what I am saying.

MR. COHEN: Then I will just as soon hold it for continuity sake. I would just as soon hold off on everything.

MR. KAIN: I don't want to hold off on everything.

MR. COHEN: I am talking with the balance of the deposition. You see, after I ask this and a number of other questions then Mr. Kain asked some more questions, some of which dealt with this topic and then Mr. Lory followed with some questions and if we are going to hold off until tomorrow, then we just have to hold off on all of it and that in effect means bringing tomorrow into today. How is that for a surrealistic approach?

THE COURT: That's pretty good.

MR. KAIN: You are not suggesting I am

1 Gen 30

2 precluded from reading this?

3 MR. COHEN: I don't know how it could make
4 any difference to Mr. Lory if it be read this afternoon
5 or tomorrow morning and I do want to read this before I
6 have Mr. Andre testify because it gives a background for
7 his testimony and he is a hostile witness.

8 THE COURT: All right, let me take about a
9 ten-minute recess and give some thought to this.

10 (In open court.)

11 THE COURT: Ladies and gentlemen of the jury,
12 we will take about a ten-minute recess.

13 (Recess.)

14 (Jury not present.)

15 THE COURT: Gentlemen, let me say that I do
16 wish, given the complexity of this problem, that I
17 had been alerted to this, even as much as three or four
18 days ago, because I find it very troublesome as to how
19 to handle it. The next time we foregather in
20 this case, if you have a problem of this kind which you
21 foresee, would you please call it to my attention ahead
22 of time so that I can give it more mature thinking than
23 I am going to be forced to do this afternoon. I have
24 in mind to do the following, subject to any thoughts that
25 any of you furnish me.

1 Cpa 91

2 I have in mind to call Mr. Andre to the stand
3 outside of the presence of the jury and permit an inquiry
4 of him as to the nature of the accident here and let's
5 find out what he has to say and then work back. In
6 that fashion we will be able to see just exactly where
7 we are going with this, because the way we are going
8 into this, as I understand the sequence here,
9 Mr. Gous says a boatswain spoke to him about a
10 carpenter. I don't see any need, frankly, to permit
11 Mr. Gous to testify that a boatswain told him something
12 because the boatswain himself testifies firsthand as
13 to what he saw and he talked to the carpenter. The
14 boatswain has neither the carpenter's name nor an
15 admission of the carpenter that he dropped the lumber on
16 Mr. Iancuzzi's head. It's not until we get to the
17 police report, the aided report, that there is a
18 statement of the actual dropping on the head and the
19 name of the claimed carpenter.

20 So unless anybody can suggest to me a better
21 method of proceeding I would ask Mr. Cohen if we could
22 call Mr. Andre to the stand. I understand he is in the
23 witness room. Let us then inquire as to what he has to
24 say. I do think that he could have been the subject of
25 a pre-trial deposition, but he wasn't and before we

1 Goa 92

2 start letting the jury hear any of this, I think we have
3 got to know what our end ground is.

4 It may be that he admits it; it may be that
5 he admits it in part and denies it in part and it may
6 be that he can be impeached with the boatswain's test-
7 imony. It might be a lot of things, but I think we
8 ought to hear what he has to say.

9 MR. KAIN: I interrogated the boatswain at
10 length on this. He has no idea of the identity of the
11 carpenter that he spoke to. There is no way, at
12 least through the boatswain, that he can identify him.
13 Maybe Mr. Andre will agree that he said this to him.

14 THE COURT: The boatswain also in his
15 testimony does not say that the carpenter told him that
16 the piece of wood fell on the man's head, whereas in
17 the statement he does say that that's what the man
18 told him.

19 I think we ought to be firmer in our ground.

20 MR. COHEN: We don't have the boatswain's
21 testimony, do we?

22 THE COURT: I have a copy of the letter.
23 It's Mr. Matthee's.

24 Well, Mr. Cohen, is there any reason we cannot
25 call Mr. Andre and see what he has got to say?

Qpa 93

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2 MR. COHEN: I am just thinking now from
3 the top of my head. He is a hostile witness. I don't
4 know -- he wouldn't talk to me. I don't know what he is
5 going to say. I have other witnesses and other proof to
6 offer, including the attorney, house counsel for
7 the firm that Mr. Andre works for who took a statement
8 from him, a signed statement.

9 THE COURT: Do you have a signed statement?

10 MR. COHEN: Yes.

11 THE COURT: This is of Mr. Andre?

12 MR. COHEN: Yes.

13 THE COURT: Might I see that, please?

14 MR. COHEN: Yes.

15 (Handed.)

16 THE COURT: This reinforces me in my
17 thinking.

18 MR. COHEN: You see, the problem is that
19 Mr. Andre -- as I piece this together, your Honor --
20 has admitted that he was passing or throwing lumber
21 down from the main deck to the upper 'tween deck at the
22 time of the accident standing on the inshore side in the
23 area of where the draft would pass and that immediately
24 following the accident he told a number of people that
25 he dropped the board, or the board fell from his hand and

1 Gba 31

2 struck Mr. Iannuzzi. Sometime thereafter, your Honor,
3 Mr. Andre has had a change of heart, or of some
4 thinking and has changed what he initially said somewhat.
5 You see, what we are doing is trying the tail end of this
6 case first. For example, I have the medical examiner of
7 New York County under subpoena and he is supposed to come
8 here tomorrow morning.

9 THE COURT: All I am doing at this point is
10 I am in effect taking the deposition that really
11 ought to have been taken months or years ago. I am not
12 doing anything except putting this man on record. The
13 jury is not going to be here while this is taken.

14 MR. COHEN: I see.

15 You want me to interrogate Mr. Andre first,
16 then? All right.

17 THE COURT: Incidentally, in connection with
18 Mr. Andre, was a police officer --

19 MR. COHEN: He is here.

20 THE COURT: The police officer is available
21 as well?

22 MR. COHEN: Yes.

23 THE COURT: At least we have everybody here?

24 MR. COHEN: I tried. I have Mr. McGaren
25 here who took the statement.

Gpa 95

THE COURT: I do think we should find out what Mr. Andre is going to say in the absence of the jury.

MR. COHEN: I just don't want it to be understood or indicated that I am agreeing to be bound by anything Mr. Andre might say at this time.

THE COURT: You are not. He is a witness in this case and he is not binding upon anybody. He is merely a fact witness.

MR. COHEN: All right.

THE COURT: Mr. Lory, do you have any thoughts to persuade me differently?

MR. LORY: The first thing that comes to mind, your Honor, is the fact that on the case as it stands now before the Court and the jury, Mr. Iannuzzi is on the main deck.

THE COURT: I know, but maybe he was not on the main deck.

MR. COHEN: If he was not, I don't see how the board could have hit him.

THE COURT: If it was a factual matter that this man says he was not on the main deck, then the jury has yet another issue to decide.

MR. COHEN: I don't know whether Mr. Andre will say where Mr. Iannuzzi was. I know where

1 See 56

2 he will put him because he says he dropped his board on
3 him. Mr. Lory already knows I'm sure because he has
4 seen the documents, but the coroner's report on
5 autopsy finds no evidence of injury to Mr. Iannuzzi
6 at all except for a fracture on the top of the head.
7 Not the back. There were no injuries to the shoulders
8 or neck or low back area. Nothing else except the
9 fracture on the top of the head. The medical examiner
10 will testify, because I have spoken to him, that that
11 type of injury is very, very compatible with a piece of
12 lumber being dropped from a height above and striking
13 him.

14 THE COURT: Falling on him rather than him
15 being struck?

16 MR. COHEN: Than being struck by a moving
17 car and thrown down into a hatch below.

18 THE COURT: Mr. Cohen, it isn't I don't
19 appreciate your point, I want to surmount this thicket
20 correctly.

21 MR. COHEN: I am not really sure what the
22 thicket is because if I have been responsible in
23 creating it and not tripping your Honor off to it
24 before, I'm sorry.

25 THE COURT: The problem is unless we end up

1 Cpa 27

2 with some competent proof on this issue, the prejudice
3 may outweigh the effort to prove it. I don't want to
4 have the jury hear an awful lot of speculation about
5 lumber and then end up with nothing justifying their
6 having considered it. That is my concern.

7 MR. COHEN: They have to end up with something
8 because they are certainly entitled to whatever the
9 medical examiner will testify to and as found in the
10 autopsy report. From that alone --

11 THE COURT: At this point the most we have
12 is a bonisain of the PROSECUTOR says that some
13 carpenter told him that he dropped some lumber.

14 MR. COHEN: We have more. We have
15 Mr. Coppola testifying that at the time of the
16 accident a carpenter was standing at the inshore
17 forward corner passing lumber down. The others dispute
18 that there were any carpenters there at all, that's
19 true.

20 THE COURT: Let's do this other. Mr. Andre
21 is going to have to testify at some time. Let's get
22 what he has to say on record and it may be that things
23 can be developed from it.

24 MR. COHEN: May I ask those papers your
25 Honor?

Gpa 072

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THE COURT: You certainly may.

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Do you think I should excuse the jury for a

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halfhour or let them sit?

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MR. COHEN: I think a half hour is very

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conservative.

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THE COURT: I will keep them here.

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HERE TAKEN PAGES 1 to 15 LEFT HAND NUMBERS
 NOW PAGES 780 to 794 RIGHT HAND NUMBERS

VOIR DIRE EXAMINATION OF:

JOSEPH ANDRE

(PREVIOUSLY DELIVERED)

1 GOS 58

2 (In the robing room.)

3 THE COURT: Mr. Cohen, as we were walking in,
4 has aptly stated that all I wanted here was a foundation
5 to determine that we were not engaged in a wild goose chase
6 which might in some way prejudice a trial which cost us
7 four, five, six, seven, eight days at this point. I
8 am personally satisfied that we are not engaged in a
9 wild goose chase and I think that the purpose of my
10 having this man on the stand has been satisfied.

11 MR. KAIN: Anything else, I submit, your
12 honor, would be for the jury to determine.

13 THE COURT: I think this being a declaration
14 against interest on his part, that he did state to a
15 police officer and a number of the crew that he
16 dropped this. You did not ask the ultimate question,
17 obviously, did you drop it, but the acknowledgement that
18 he has admitted to people that he dropped it is sufficient
19 to me, being against a pecuniary interest, to warrant
20 continuing in this line.

21 Now, the only thing I would say, Mr. Cohen,
22 is I do not see any purpose whatever with Mr. Gous
23 testifying what the boatswain told him and I wish you would
24 somehow arrange to go directly to the boatswain. What
25 the boatswain told Mr. Gous is hearsay and totally unnecessary

1 Cpa 9

2 MR. COHEN: Mr. Kahn started with Mr. Gous'
3 deposition rather than Mr. Matthee's, so I am just
4 following along in the order he started.

5 THE COURT: Somehow rearrange your order
6 here because the boatman is the direct testimony.

7 R. COHEN: Except Mr. Gous corroborates
8 what the boatman tell him, so we know this is not a
9 recent concoction on anybody's part.

10 THE COURT: If it's plain that it's a recent
11 concoction, we can go back and put that in, but at this
12 point there is no such claim.

13 MR. LOFF: If your Honor is looking at me,
14 there is one thing outstanding which would resolve the
15 thing, and that is the question to the witness where
16 Mr. Tammami was just before he dropped his board. If
17 he was out below, then all this is just a wild goose chase
18 with respect to collateral matters.

19 THE COURT: All he says is, "I told two
20 people that I dropped a piece of damage on a man's head."

21 MR. LOFF: At a time that he did not know who
22 the victim was.

23 THE COURT: Is there any question that
24 there is only one man that fell off of that vessel at that
25 time?

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MR. KATH: No question.

MR. LORY: Your Honor, the man could drop a piece of luggage into that hatch and believe he struck someone. It said he did not know who it was. At this particular point, since we are concerned with Mr. Iannuzzi, I think the witness should be asked where was Mr. Iannuzzi at the time this happened. If he is on the main deck, then certainly this witness gave a statement in the belief that Mr. Iannuzzi was below -- I'm sorry, in the belief that the victim was below.

MR. COHEN: The policeman who was investigating gave the name Iannuzzi.

THE COURT: All right, let's go forward.

MR. COHEN: You want me to eliminate at this time --

THE COURT: I don't think Mr. Gous' hearsay at this point has any admissibility.

That was the question that prompted the whole thing. I don't think that question elicits an admissible answer.

MR. COHEN: Could I just have a moment?

THE COURT: Why don't we take ten minutes and everybody can re-orient themselves.

Let's take a ten-minute break now.

(Sighs)

Gpa 101

MR. COHEN: Your Honor, pursuant to the proceedings we have just had outside the presence of the jury, I at the moment will go from line 23 on page 56 of Mr. Gous' deposition over to line 25 on page 61 and reserve my right to offer that portion of Mr. Gous' testimony at a later date.

THE COURT: Absolutely.

MR. COHEN: Thank you.

MR. KAIN: Page 61, line 25.

"Q Was it the forward winches at the No. 3 hatch that were being used before the accident to take on these motor vehicles?

"A Yes, sir."

MR. LORY: Objection, your Honor. The witness testified that he was not present.

MR. KAIN: If your Honor please, the longshore witnesses who have testified on plaintiff's case, they already testified several times that this was not the first car; there were a series of motor cars taken on board, three or four, and I think the objection is improper in view of this testimony, although he was not specifically there at the time of the accident, but he certainly can be presumed to have some knowledge of what winches had taken on the motor cars before the accident.

Gda 102

"Gous"

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1 THE COURT: I think that for the purpose of
2 identifying the winches that he is later giving direct
3 testimony about, it's permissible, even though this is
4 hearsay to him, because I don't think there is any
5 question on this record, that Mr. Coppola testified that --

6 MR. LORY: I am not quarreling about that,
7 your Honor. I merely want the Court and jury to know
8 that the witness was not present.
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10 THE COURT: I will overrule the objection.

11 MR. COHEN: Not present at the moment of
12 the accident.

13 THE COURT: That's correct.

14 MR. LORY: Or at the time the vehicles
15 were being brought aboard.

16 MR. KAIN: That hasn't been testified to
17 one way or another, your Honor.

18 MR. LORY: All right.

19 "Q It was those same forward winches that
20 were used to take the injured man off the ship?

21 "A Yes, sir.

22 "Q And was it the longshoremen who used
23 those same forward winches to remove this injured man
24 from the ship?

25 "A Yes, sir.

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"Q Do you know if it was the same winch operator who used those same winches to remove this man from the ship as had been using them to take cars onto the ship before the accident?

"A No.

"Q Excuse me?

"A No.

"Q You don't know?

"A No.

"Q You saw when you arrived after the accident --
When you arrived at the No. 3 hatch after the accident was reported to you, you saw that the injured man was being removed on a tray?

"A Yes, sir.

"Q That tray was being removed from the ship by means of the ship's booms and winches, right?

"A Yes, sir.

"Q And the winches being used to move that tray with the man on it were the No. 3 forward winches, correct?

"A Yes, sir.

"Q And there was a longshoreman operating those forward winches doing that work, correct?

"A Yes, sir.

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"Q You were able to see that longshoreman who was operating those winches, right?

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"A Yes, sir.

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"Q Can you tell me if the man that you saw using those No. 3 forward winches to remove the injured man from the ship was a man whom you at any time earlier had seen operating those same three winches in connection with the taking on of cargo -- the same No. 3 winches?

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"A No.

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"Q Does that mean you are unable to tell me, or he was not the same man?

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"A I can't tell you if it was the same man.

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"Q Did any other work take place in the No. 3 hatch after this accident?

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"A They just finished securing the cargo. There was no more loading done after that.

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"Q You mean the carpenters had finished securing the cargo?

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"A Yes.

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"Q So that after the accident happened, the only use to which the No. 3 forward winches were put was to remove the injured man, is that correct?

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"A And to close the hatches and swing the derrick in.

"Q And to close the hatches?

"A Yes.

"Q And the hatches were MacGregor type hatches?

"A Yes.

"Q From that point on up until the time those No. 3 forward winches were tested in Cape Town, they were not used at all; is that correct?"

MR. LORY: Objection, your Honor.

MR. COHEN: I haven't finished the question.

THE COURT: There was an objection?

MR. LORY: I have an objection with respect to the testifying, your Honor.

THE COURT: Your objection is what?

MR. LORY: Based upon what we discussed in camera.

THE COURT: You mean that there is no showing that the remote system was tested, only the winches?

MR. LORY: That is right.

THE COURT: As we discussed in camera, that is all that this testimony is being permitted into the record to show; that it's the winches themselves that were tested, not the remote system.

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MR. LORY: Thank you, your Honor.

THE COURT: You're welcome.

"A That's correct, yes, sir.

"Q Not only were they not used but they were
not repaired in any way during that period of time;
is that correct?

"A Yes, sir.

"Q So that their condition was unchanged?

"A That's correct, yes.

"Q That was on expected orders that were
issued to the ship?

"A That's correct, yes.

"Q By the way, do you know how old this ship
was?

"A Plus or minus two years.

"Q And I believe you testified that you
personally witnessed the testing of these winches
that was performed in Cape Town?

"A Yes."

MR. COHEN: At this time, your Honor, could
I go back to page 27, line 14.

"Q Which winches were tested in Cape Town?

"A No. 3 forward winches.

"Q Were you present when the winches were tested?

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"A Yes, sir.

"Q Do you know by whom the winches were tested?

"A Some independent engineering firm.

"Q Not by ship's force?

"A No, not Marine, nothing to do with the company at all.

"MR. COHEN: Do you have the name of the testing company?

"MR. KAIN: No.

"Q You were present when these winches were tested, were you?

"A Yes, sir."

MR. COHEN : Now returning back to page 66, line 3.

"Q Can you describe to us, please, just what that testing consisted of?

"A That's a spring balance that gets shackled onto the deck with a hook in, and then the runner is hooked into that, and then the winch is operated to give it tension on the spring.

"Q Operated in that condition, they are examined to see that they are functioning properly; is that right?

Gpa 103C

"Gous"

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"A Yes.

"Q All that is done by some independent engineering firm?

"A Yes.

"Q You were present and witnessed what the test consisted of and how it was done?

"A Right.

"Q According to your own observations, were the winches functioning properly at that time?

"A Yes, sir.

"Q They tested out well?"

MR. LORY: I object to the next question.

MR. COHEN: This is all based on his own observations, if your Honor please.

THE COURT: I will sustain that question and answer. Go on to the next one.

MR. COHEN: All right. Page 66, line 24.

"Q No repairs were required and none were made; is that correct?

"A Correct.

"Q Following that test, were those winches thereafter used to handle cargo?

"MR. KAIN: Will you fix the time, please?

"Q At any time subsequent.

"A Yes, sir.

"Q And when the winches were used subsequent to that test to handle cargo, were they used without any repairs being made?

"MR. KAIN: May we again fix the time?"

MR. COHEN: Then I ended up withdrawing that question.

We will go on to line 14.

"Q Can you tell us approximately when it was that the No. 3 forward winches would next have been used to handle cargo?

"A On the American coast again.

"Q In South Africa you use shoreside cranes?

"A That's correct, yes.

"Q Do you recall looking into the No. 3 upper 'tween deck when you arrived at the scene of the accident?

"A No, sir."

MR. COHEN: That was the end of my questioning on that deposition, your Honor.

MR. KAIN: This is further direct by me, if your Honor please. Page 68, line 5.

"Q When this ship arrived in Cape Town and these cargo winches were tested, was this done before or

1 after the discharge of the Cape Town cargo from the
2 No. 3 hatch?
3

4 "A It was done before, sir.

5 "Q Now when you got up to No. 3 hatch on
6 the evening of this accident, you told us you observed
7 the injured man being taken ashore, I think you said,
8 on a tray; is that correct?

9 "A Yes, sir.

10 "Q With the ship's winches?

11 "A Yes, sir.

12 "Q Insofar as you were able to tell by your
13 observation, were these winches operating properly
14 as this man was being taken ashore?

15 "A Yes, sir.

16 "Q Was there any erratic movement of the
17 tray on which this man was on as he was being taken
18 ashore?

19 "A No, sir.

20 "Q When this cadet, I think you said his
21 name was Henry, was that his name?

22 "A That's correct.

23 "Q When he reported this accident to you,
24 did he tell you he was an eyewitness to this accident?

25 "A No, sir.

Gpa 104B

"Gous"

"Q And you have mentioned that carpenters were working on board the vessel shoring cargo?

"A That's right.

"Q Were these carpenters members of the ship's crew, were they ship's carpenters, or were they shoreside carpenters?

"A Shoreside carpenters."

MR. COHEN: I asked for a stipulation at that point, your Honor, from Mr. Kain, which I received and may I have it again now.

I said, "Can we stipulate that they were not in the employ of my client either, Mr. Kain?"

MR. KAIN: My answer was, "I will stipulate that insofar as I know they were not in the employ of your client, but I have no information."

THE COURT: Mr. Kain, that concludes your reading?

MR. KAIN: That does, unless Mr. Lory wishes to continue.

THE COURT: Mr. Lory, do you have anything further?

MR. LORY: I am just looking for one thing further, if your Honor will let me have a minute.

1 Gpa 105

"Gous"

2 THE COURT: Surely.

3 (Pause.)

4 MR. LORY: Mr. Molanphy, at page 35 will you
5 assist me, please.

6 Page 35, line 12.

7 "Q Do you recall about what time it was that you
8 went to the chief officer's cabin?

9 "A Before 7:00 o'clock.

10 "Q In the interval between 6:30 and the time that
11 you went to the chief officer's cabin, do you recall what
12 you did?

13 "A No, sir."
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MR. LORY: Please go to page 70, line 19.

"Q At any time during the 23rd or the 24th of November, 1968, did you watch the carpenters at work on those particular days?

"A Yes, sir.

"Q Did you watch them passing lumber down as you told Mr. Cohen?

"A Yes, sir.

"Q When they passed lumber down, were they passed one piece at a time?

"A Yes, sir.

"Q Did you see them on any occasion passing more than one piece of lumber down at a time?

"A No, sir."

MR. COHEN: May we have the same proviso that Mr. Lory insisted on, that Mr. Gous was not an eyewitness to this occurrence? In other words, Mr. Lory asked us before to remember that Mr. Gous was not an eyewitness to this accident. I ask that we remember the same thing in connection with this testimony he is now reading.

THE COURT: Except that he said that apparently he from time to time watched them passing lumber.

1
2 MR. COHEN: Yes, but he was not an eyewitness
3 to this accident. He wasn't there at that time.

4 THE COURT: He was not an eyewitness to events
5 bringing us here to Court today, that's correct.

6 MR. LORY: There is no question of that.
7 The first question, your Honor, was, "At any time during
8 the day did you watch the carpenters work?"

9 THE COURT: I think the jury understands that.

10 MR. LORY: I have nothing further on this
11 transcript.

12 MR. KAIN: I have one on page 78, line 21.
13 This is Mr. Lory's question.

14 "Q At the time the survey was conducted,
15 was the hatch yet closed or had they opened them?

16 "A The hatch was closed."

17 MR. COHEN: Page 74, at the bottom of
18 line 25 I stated as follows, "If there is a written
19 report of that inspection made by that -- "

20 MR. LORY: Objection, your Honor. I object
21 at this particular point.

22 THE COURT: Come up to the side bar, please.
23
24
25

Gpa 107

(At the side bar.)

THE COURT: Now, Mr. Cohen, what is the purpose for that comment?

MR. COHEN: No comment. I asked if there was one and Mr. Kain said there was one and he would supply it. It was marked for identification and then at a later point, your Honor, I offered it in evidence. Mr. Kain conceded it was the original report, or a copy of it, and that it was his client who had the testing performed. I offered them in evidence. They are relevant to the claim offer.

THE COURT: I had understood earlier that Mr. Lory was claiming there was no foundation for this.

MR. CONLEY: See, Mr. Lory and I might have slightly different positions here and I shouldn't be precluded in my client's position by reason of what he wants to do on behalf of his client.

MR. KAIN: Maybe you should offer it on your case.

MR. CONLEY: You want me to wait until tomorrow? All right, I will wait until tomorrow.

MR. LORY: So the record is clear, I will object to that report in its entirety. There is no

basis for cross examination. There is no room for cross

1 Cps 107

2 (At the side bar.)

3 THE COURT: Now, Mr. Cohen, what is the
4 purpose for that comment?

5 MR. COHEN: No comment. I asked if there was
6 one and Mr. Kain said there was one and he would supply
7 it. It was marked for identification and then at a
8 later point, your Honor, I offered it in evidence.
9 Mr. Kain conceded it was the original report, or a copy
10 of it, and that it was his client who had the testing
11 performed. I offered them in evidence. They are
12 relevant to the claim of fact.

13 THE COURT: I had understood earlier that
14 Mr. Lory was claiming there was no foundation for this.

15 MR. COHEN: See, Mr. Lory, and I might have
16 slightly different positions here and I shouldn't be
17 responsible for my client's position by reason of what he
18 wants to do on behalf of his client.

19 MR. KAIN: Maybe you should offer it on your
20 part.

21 THE COURT: You want us to wait until
22 tomorrow? All right, I will wait until tomorrow.

23 MR. LORY: So the record is clear, I will
24 stipulate that that is its entirety. There is no
25 basis for cross-examination. There is no room for cross

1 Gpa 108

2 examination. There was no opportunity for cross
3 examination with respect to that report.

4 THE COURT: Hold it for tomorrow.

5 MR. COHEN: All right.

6 (In open court.)

7 MR. COHEN: In accordance with your Honor's
8 ruling I will defer until tomorrow morning.

9 MR. LORY: Page 79, continuing --

10 THE COURT: Mr. Cohen states that he will
11 defer his offer until tomorrow because of the matter
12 we discussed at the side bar.

13 MR. LORY: Page 79, continuing where Mr. Kain
14 left off, line 13.

15 "Q Wouldn't it be fair to say that they
16 did in fact use the winches at No. 3 hatch to top the
17 booms?

18 "A No, sir. The booms have independent topping
19 winches.

20 "Q They used the independent topping winches
21 in order to raise the booms; is that correct?

22 "A Yes."

23 MR. COHEN: Mr. Lory has now read from
24 certain testimony regarding the testing of the winches
25 done at Cape Town and I think having done so certainly

1 Gpa 108a

"Gous"

2 obviates some of the objections he made earlier to
3 the admission of those reports of testing.

4 MR. LORY: Objection, your Honor.

5 THE COURT: I am not sure that it had.
6 I will give consideration to it overnight.

7 MR. KAIN: Your Honor, if counsel are through,
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1 Depa 122

2 I would like to continue with Mr. Matthee's deposition.

3 THE COURT: Fine. Go ahead, sir.

4 MR. KATH: I seem to be missing a copy, unless
5 Mr. Molanphy has both copies of the transcript.

6 If your honor please, this is the deposition
7 of the ship's boatswain, Arthur C. Matthee, also taken
8 on October 26, 1973 at my office, commencing at 12:55 p.m.,
9 and the parties were represented by the same attorneys
10 as in the deposition of Mr. Goss.

11 Page 3, line 4.

12 "Q What is your address?

13 "A Home address, 23 Maryland Street, South
14 Africa.

15 "Q By whom are you employed?

16 "A South African Marine Corporation.

17 "Q Are you presently employed aboard a ship by
18 South African Marine Corp.?

19 "A No, sir.

20 "Q Are you working ashore for South African
21 Marine Corporation?

22 "A That's right.

23 "Q How long have you been going to sea,

24 Mr. Matthee?

25 "A About 15-16 years.

1 pp. 112

2 MR. COMST: I object to the classification
3 as longshoreman's carpenters and I ask that that be
4 stricken.

5 MR. KATH: I have no objection to counsel's
6 objection, if you will, your Honor.

7 THE COURT: All right.

8 MR. KATH: This is the way the witness
9 testified to it.

10 THE COURT: In other words, you object to the
11 possessive there?

12 MR. COMST: Yes. The carpenters were not
13 employed by my client and I thought we so stipulated
14 before.

15 THE COURT: Therefore, "longshoreman's" may
16 be excised from the answer and the jury should disregard it.

17 MR. KATH: I am skipping now from line 9
18 of page 11, in view of our in camera --

19 MR. COMST: Could we approach your Honor for
20 instructions?

21 THE COURT: All right.

22 (at the side bar.)

23 (Discussion held off the record.)

24 (In open court.)

25 MR. KATH: I am skipping to page 12, line 4.

(Deposition of Arthur Matthee continued
to be read.)

MR. KATZ: There again, in view of your
Honor's discretion, I am for the moment omitting from
page 12, line 22 to line 15 at page 19.

(Deposition of Arthur Matthee continued
to be read.)

MR. KATZ: I have no further questions."

But if there is no objection, your Honor, I
would like to continue just for continuity with the
remaining portions of the deposition. The questions
weren't asked by me, but I believe I am entitled to
read them in.

THE COURT: Surely, go ahead.

MR. KATZ: This is examination by Mr. Lory,
page 21, line 12.

(Deposition of Arthur Matthee continued
to be read.)

MR. KATZ: I am skipping to page 22, line 11.

(Deposition of Arthur Matthee continued
to be read.)

MR. KATZ: I am omitting from page 27, line
12 down to line 21, again for the reason that we discussed
in court, your Honor.

1 112

2 This is cross examination by Mr. Cohen.

3 Page 27, line 24.

4 (Deposition of Arthur Matthee continued

5 to be read.)

6 MR. COHEN: At that time I asked to see it
7 and it was marked for identification, if your Honor
8 please.

9 MR. KATN: It's marked for identification.

10 MR. COHEN: I won't offer it now, I will
11 offer it later.

12 MR. COHEN: Go ahead.

13 (Deposition of Arthur Matthee continued

14 to be read.)

15 MR. KATN: Here again, if your Honor please,
16 on page 32, line 14, in view of your Honor's direction
17 I am for the moment omitting the remainder of that
18 page, page 32. Page 33, line 2.

19 (Deposition of Arthur Matthee continued

20 to be read.)

21 "MR. COHEN: I have no further questions."

22 The next questions are mine, page 33, line 17.

23 (Deposition of Arthur Matthee continued

24 to be read.)

25 "MR. KATN: No further questions."

1 301 113

2 MR. KAIN: Do you want the rest of that in,
3 Mr. Lory?

4 MR. LORY: No, sir, I don't think it's
5 necessary, Mr. Kain.

6 MR. KAIN: That concludes the deposition.

7 THE COURT: All right, ladies and gentlemen,
8 we will recess until tomorrow morning. Don't speak with
9 anyone about the case. Continue to keep an open mind
10 and I will see you 10:00 very promptly. We have a
11 long day tomorrow so be very prompt.

12 (Jury not present.)

13 THE COURT: Do you want me to give any
14 directions to anyone?

15 MR. COHEN: Yes, sir.

16 MR. KAIN: I would anticipate, your Honor,
17 an hour to an hour and a half we will finish the
18 defendant's case tomorrow.

19 THE COURT: Why don't I direct them to come
20 at 11:00; is that all right?

21 MR. COURT: Yes.

22 THE COURT: Mr. Andee, Officer and Mr. McCaren,
23 would you please return at 11:00 in the morning. We have
24 been given reasonable assurance that we will reach you
25 all tomorrow morning or early in the afternoon. Thank
you very much.

(Court adjourned to May 20, 1974 at 10:00 a.m.)

1 BAGES 1-16 LEFTHAND NUMBER

2 PAGES 819-834a RIGHTHAND NUMBER

3 PREVIOUSLY DELIVERED MAY 29

4 WIT: WILLIAM WHEELER -Direct Testimony

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2 MARIA IANNUZZI,

Plaintiff,

3 vs.

4 SOUTH AFRICAN MARINE CORP.,

68 Civ. 2829

Defendant and

Third-Party Plaintiff

5 vs.

6 INTERNATIONAL TERMINAL OPERATING

CO., INC.,

Third-Party Defendant.

7 May 29, 1974

8 10 a.m.

9 (Trial resumed, jury present.)

10 THE COURT: You may proceed, sir.

11 WILLIAM WHEELER, called as a witness by the

12 defendant and third-party plaintiff, being first duly

13 sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. KAIN:

16 Q Captain Wheeler, what is your present employment?

17 A I am presently self-employed as a marine surveyor
18 and a marine consultant.

19 Q Would you, Captain, for the benefit of his Honor
20 and the ladies and gentlemen of the jury, state your marine
21 background.

22 A Yes, sir. 1939, graduated from high school. I
23 started to sea as an ordinary seaman. From 1936 to '38 I
24 worked as a rigger in construction, principally. In 1938 I
25 was enrolled in the maritime commission cadet training

rq2 Wheeler-Direct
program, which is now known as the U S Merchant Marine
Academy.

I was graduated from that course of training in 1942 with a third officer's license. I sailed as a third officer for about a year and a half. I progressed through second officer, chief officer and finally in 1945 I passed my examination for master of ocean going vessels, any tonnage, any waters.

In 1945 I sailed as master continually until '49 when I reverted back to chief mate. In 1950-'51 I was on active duty with the Navy. In '52 back to merchant ships as chief mate. At the end of '52 I came ashore and I worked as a stevedoring superintendant here in New York.

At the end of '54, early '55 I went back to sea as a master of American flag vessels. At the end of '55 I came back a shore again as a -- in my present capacity, as a marine surveyor and marine consultant.

Q Now, Captain, did you approximately two years ago go on board the South African Huguenot in Brooklyn at my request?

A Yes, sir, I did.

Q Did you at that time examine and operate the cargo winches at the forward end of the vessel's number 3 hatch?

A Yes, I did.

rq3

Wheeler-Direct

Q Will you tell me, Captain, what is the purpose of a tag line?

A A tag line is to provide manual control of a draft that's suspended on the end of a winch line while it is in the air and beyond arms length. The tag line is attached to it prior to its being hoisted and the man just holds the tag line and can control the spinning or the swinging of the automobile in this case.

Q In loading an unboxed automobile weighing approximately 4,000 to 4,500 pounds, in other words a large unboxed automobile into the number 3 hatch of the South African Huquenot, would a tag line, in your opinion, based on your experience, be a necessary adjunct to the loading of such an automobile?

A Yes, sir, it would.

Q Why is that, Captain?

A Because of the deremention of the hatch opening. It is about 24 feet wide. Because the car -- the automobile is picked up with its fore and aft line at a -- perpendicular to the plane of the keel of the ship. The car is driven in facing the hull of the ship, picked up at that angle and then it is turned around so it can go down in a fore and aft latitude.

Q Not many tag lines, in your opinion, Captain, would

rqd Wheeler-Direct

be necessary in loading an automobile?

A Where the deck is clear and the man can move around manipulating one tag line, one tag line would be sufficient. Where the decking is occupied, there are obstructions in the man's way, then it would be necessary to use two tag lines and two men would tend -- one man would tend each tag line.

Q Captain, I show you a cargo stowage plan, which is Defendant's Exhibit H in evidence.

Can you tell me, Captain, what is a cargo stowage plan? What is it's purpose?

A cargo stowage plan is a graphical display or a map showing the approximate positioning -- disposition of the various lots of cargo in the ship. It shows the on-deck area; it shows the upper 'tween deck area in plane plan view as if you were looking down on it; it shows the lower 'tween deck area, again in plane view, birds-eye view looking down on it and it shows the lower hold on a side elevation, as if you were outside looking on a horizontal plane, a side elevation view.

Q Would you look at that cargo stowage plan before you, Captain, Defendant's Exhibit H in evidence, and tell me if it is identified as to what ship it pertains to, what voyage and what date.

1 rg5 Wheeler-Direct

2 A Yes, sir. It is related to the South African
3 Huguenot loaded at Pier 6, Port Authority Brooklyn. It
4 sailed November 24, 1963 on voyage number 10 southbound.

5 Q Would you look at that cargo stowage plan before
6 you, Captain, and will you tell me what deck cargo was
7 loaded on the starboard side of the number 3 hatch of the
8 South African Huguenot when the vessel sailed from New York
9 on November 24, 1963?

10 A There was one unboxed tractor weighing six-tons
11 on the starboard side loaded at Galveston and destined for
12 East London.

13 Q Was there any cargo on the port side? At the number
14 3 hatch I am referring to.

15 A Yes, sir. There were two unboxed tractors, one at
16 30-tons and one at eight-tons, both loaded -- one loaded at
17 Galveston for East London and one at Baltimore for Capetown.

18 Q Does that cargo stowage plan show any drums of
19 any kind loaded any place in number 3 hatch?

20 A Not at number 3 hatch, no, sir.

21 Q Now, Captain, will you direct your attention to
22 the upper 'tween deck as shown on that cargo stowage plan and
23 will you tell me how many automobiles were loaded into the
24 number two upper 'tween deck when that vessel sailed from
25 New York.

1 ref Wheeler-Direct

2 A There were two automobiles, one loaded for Durban
3 and one for Capetown in the upper 'tween decks.

4 Q Can you tell me approximately where in the upper
5 'tween deck, according to that plan, those automobiles were
6 located?

7 A The Durban automobile, destined for Durban, was
8 situated in the port forward corner of the upper 'tween
9 deck space. The New York-Cape Town unboxed auto was situated
10 right in the square of the hatch, about mid-length of the
11 hatch square.

12 Q Does that plan show any automobiles located or
13 stored on the starboard side or in the starboard wings of
14 the number 3 upper 'tween deck?

15 A No, sir. None.

16 Q What cargo does it show in the starboard of the
17 upper 'tween deck'

18 A There are 51 bales of textiles, 13-tons in the
19 starboard after corner of that space, and there is some --
20 there is another 60 packages of textiles weighing three-tons
21 in the same general area, and the whole middle -- mid-length
22 and forward corner -- forward wing is empty. There is nothing.

23 MR. KAHN: Would Your Honor bear with me a moment?

24 THE COURT: Absolutely.

25 (pause)

1 ra7

Theeler-Direct

2 Q Captain, I show you this photograph which is
3 Defendant's Exhibit K in evidence and I direct your attention
4 specifically to the ladder shown about in the middle of the
5 hatch in that photograph.

6 A Yes.

7 Q Could you tell me what the purpose of the ladder is.

8 A The purpose of the ladder is so a man can conveniently
9 or adequately climb up on top of that hatch cover -- the
10 hatch coaming when the cover is on because they must be made
11 water tight and there are devices across the top of those
12 hatch covers that have to be actually weighted in order to
13 make a water tight closure of the hatch when the ship goes
14 to sea. So the ladders at the hatch coaming provide access
15 to the top of the hatch.

16 Q Is that necessitated by the height of this hatch
17 coaming?

18 A Yes.

19 Q Does that photograph indicate on the overlay the
20 height of the hatch coaming?

21 A Yes, sir, it does.

22 Q What is the height as indicated at that point?

23 A 4'2-1/2" in the area of the ladder.

24 Q Now, Captain, I show you this photograph, which is
25 Defendant's Exhibit M in evidence.

MR. LOWY: What is the number on the back?

1	REG	Wheeler-Direct
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2 MR. KAHN: I am sorry. The first one is 1 and the
3 second is 2. It is 3.

4 Q I direct your attention, Captain, to the platform
5 shown at the corner of the hatch coaming. Could you tell
6 me what the purpose of that platform is, that small platform?

7 A So that -- the purpose is that a man can stand on
8 the platform, whatever his height may be, and he can easily
9 look over the hatch coaming and he will be in a safe area
10 in the corner of the hatch out from under the drafts that
11 are moving in and around the mid-length of the hatch.

12 Q Is that, again, Captain, necessitated by the height
13 of the hatch coaming?

14	A	Yes.
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15 Q Captain, does the term "plane of the falls" have
16 any meaning to you?

17 A Yes, sir.

18 Q What does it mean, sir?

19 A It's a well defined vertical plane, one point of
20 which passes through the head of the up and down boom and
21 rather passes through the head of the Burton boom as dis-
22 played on the model here and --

23 "I'll be a parent, Captain."

24 Q. YES: If Your Honor please, may the Captain
25 come back and demonstrate with this model?

1 rg9

Wheeler-Direct

2 THE COURT: Yes, go ahead, sir.

3 A The plane of the falls would be the vertical plane
4 subtended by the head of the up and down boom and the head
5 of the Burton boom, and it is the vertical plane, so we only
6 need two points to suspend that plane, and it could be
7 displayed by the plane of this photograph. Anywhere down in
8 here would be the plane of the fall.

9 Q Thank you, Captain.

10 Now, Captain, based on your experience both as a
11 seaman, ship's officer and a stevedoring superintendant, is
12 it good longshore practice for a man to stand in the plane of
13 the falls?

14 A No, sir. It's one of the elementary rules. Do
15 not stand in the plane of the falls or do not stand in the
16 bite of a line.

17 Q Why is it contra-indicated or why is it not a
18 good practice, Captain, in your opinion?

19 A Because the path -- the draft, the weight of the
20 automobile in this case has to take that path transiting
21 from the pier to the hatch. It is confined to that space,
22 so that's why all personnel are cautioned to stay out of
23 that path.

24 Q Based on your experience, Captain, is it good
25 stevedoring practice for a longshoreman in communicating

rq10 Wheeler-direct

with the holdmen or people working below in the hatch? Is it good stevedoring practice, good longshore practice for an individual to stand on a ladder such as depicted in Defendant's Exhibit K before you for this purpose?

A On that particular ladder, no, because that ladder is in the plane of the falls.

Q Assuring, Captain, a necessity for communicating, a necessity for a stevedore foreman or a ship's foreman to communicate with the longshoremen working in the hatch, specifically in the number 3 hatch of the Huacnotenot, do you have an opinion as to where this individual, this foreman should have stood while communicating?

A Yes, sir, I do.

Q What is that opinion, Captain?

A The most convenient area to stand is on the platform that's fixed to the ship's hatch coaming, or if they were blocked he could stand along the aftercoaming -- in between the deck house and the aftercoaming. He would be in a confined space out of the plane of the falls.

He could stand also on the offshore side -- at the mid-length, but on the offshore side. He would then, too, be out of the plane of the falls.

Q Captain, have you in your experience as a stevedore superintendent had occasions to supervise longshoremen

1 rgll Wheeler-direct
2 working cargo or operating hydraulic winches?

3 A Yes, sir, I have.

4 Q Have you also, in your experience as a surveyor,
5 superintendant and/or ship's officer or crew member had
6 occasion to personally operate hydraulic winches?

7 A Yes, sir, I have.

8 Q Do you, Captain, based on your experience, have
9 an opinion as to whether the presence of air in a hydraulic
10 system is a gradual or immediate process?

11 A Yes, sir, I do.

12 MR. LORY: Objection, Your Honor.

13 THE COURT: On what ground, Mr. Lory?

14 MR. LORY: On the ground that we are concerned
15 specifically with November 24 of 1968. The fact that he has
16 had experience on hydraulic winches elsewhere has no bearing
17 here with respect to the question that's posed. We are
18 concerned about these winches as they were.

19 The witness has already testified that he was
20 aboard this vessel two years ago, which would be at least
21 three or more years beyond the date of this accident and what
22 circumstances are on other ships with other equipment that
23 may or may not have the same components has no bearing here.

24 MR. KAIN: If Your Honor please, I am attempting
25 to ask Captain Wheeler based on his experience in operating

1 rgl2

Wheeler-direct

2 not only these winches but other winches, the characteristics
3 of hydraulic winches.

4 THE COURT: Would you perhaps, Mr. Kain, lay a
5 little better basis for his familiarity with this type of
6 winch and I think that would obviate the objection.

7 Q Captain, how often have you been on the South
8 African Huguenot?

9 A As far as my best recollection, once about two years
10 ago. I might have been aboard it on other times for other
11 purposes, but my clear recollection is once in relation to
12 this matter.

13 Q At that time you operated the ship's winches; is
14 that correct?

15 A Yes, sir, I did.

16 Q Did you specifically operate the winches at the
17 number 3 hatch of the vessel?

18 A Number 3 forward end, yes, sir.

19 Q At the time you operated these winches at the
20 number 3 hatch forward end on the South African Huguenot, was
21 the remote control or master system operating handle spring
22 loaded?

23 A Yes, sir, they were.

24 Q On the occasions when you operated them, Captain,
25 could you tell me the approximate time, assuming the handle

1 rgl3

Wheeler-direct

2 was moved to the -- I am referring now to the operating
3 handle in the remote position -- moved to either the full
4 lowering or full hoisting position, approximately how long
5 did the handle take to return?

6 MR. LORY: Objection, Your Honor. This took place
7 two years ago. We are dealing with a 1968 accident. We
8 don't know if there were any changes, alterations or
9 modifications to the winch in the interim.

10 THE COURT: This is cumulative and I will sustain
11 the objection.

12 Q Captain, did you also have occasion or have you
13 also had other occasions to operate hydraulic winches?

14 A Yes, sir, I have.

15 Q Could you approximate for me since 1955 roughly
16 how many occasions you have had to operate them?

17 A Dozens, dozens.

18 Q Have you had occasion to operate hydraulic winches
19 during actual cargo loading operations?

20 A Yes, sir, I have.

21 Q Are you familiar with the characteristics of
22 winches which you have had occasion to operate?

23 A Yes, sir, I am.

24 Q Have the characteristics -- I am speaking now with
25 respect to the entrapment of air in the system. Have the

1 rgl4

Wheeler-direct

2 characteristics of these winches been uniform?

3 MR. LORY: Objection, Your Honor. We are now
4 trying to relate something from 1968 to this man's sub-
5 sequent or even prior experience with respect to these winches.

6 THE COURT: I think there is going to be a
7 hypothetical put to him at the end and this is the preliminary.

8 MR. KAIN: I was going to ask him for his opinion.

9 THE COURT: It has nothing to do with the specific
10 winch, but it is a hypothetical with respect to the air
11 in the line.

12 MR. KAIN: I am attempting to elicit from the
13 Captain whether there is a standard characteristic or uniform
14 characteristic of winches of this type.

15 MR. LORY: If Your Honor please, not all systems
16 on hydraulic winches are the same and have the same components.

17 THE COURT: That is what Mr. Kain is trying to
18 ascertain. Go ahead, sir.

19 MR. KAIN: Could you read him back the question.

20 (question read)

21 A Yes. In my experience the characteristic -- the
22 hydraulic characteristics of all such winches are uniform in
23 the hydraulic aspects.

24 Q What has been your experience with respect to whether
25 an air slug or an air pocket in these hydraulic winches is a

rgl5

Wheeler-direct

gradual or an immediate process; in other words the development of such an air pocket or air slug.

A The accumulation -- it's an accumulation of air or other gases. It is not always air. Sometimes the solvent, the fluid, the oil, the hydraulic fluid will degenerate with age, 15, 20 years. If the oil is in the system that long a gas is created, so it is not always air.

These bubbles will come up, rise to the surface of the compartment, or higher levels of the compartment in which they are introduced and you never have any trouble keeping vertical lines clear of bubbles, it purges itself.

The bubbles rise as it is shown on the other side of that board. The bubble will rise. You can't keep it there. It would rise and it would be vented automatically because the little reservoir at the top of that pedestal, the control pedestal is vented to the atmosphere and every time the lever is put back into neutral the chamber is vented to the atmosphere.

Q · Would you tell me, Captain, is this a gradual process?

A The accumulation in a vertical line never happens, but the accumulation in a horizontal tubing, horizontal line with a slight rise to it --

Q An accumulation of air in the system, is that a

rgl6 Wheeler-direct

gradual process?

A Yes, sir, it is.

Q Based on you experience, should this accumulation of air during this gradual process -- should it be apparent to the operator of the winch --

A Yes, sir.

Q Assuming he is an experienced operator?

A Yes, sir, it would. He would have a firm control lever when the system was full of oil and as the air was introduced and accumulated it would become more -- mushy I think would be the best word to use. He wouldn't get the firm resistance to the motion of the lever.

Q Is there, Captain, based on your experience, a custom and practice with respect to what procedures should be taken by a longshoreman winch operator when he ascertains that there is air in the system which he is operating?

A He would stop using the winch and he would inform the vessel, the officer on watch on the vessel that the winch was not operating properly.

Q Assuming the presence of air in the system based on your experience, assuming the presence of air in the system over a period of time, this would become readily apparant to the man operating the winch, wouldn't it, sir?

A I would become more and more apparant as the air

rgl6a

Wheeler-direct

or gas was accumulated.

MR. KAIN: I have no further questions.

1 Gpa 114

Wheeler-cross

2 THE COURT: Mr. Lory.

3 MR. LORY: Yes, sir.

4 CROSS EXAMINATION

5 BY MR. LORY:

6 Q Captain, I think you told Mr. Kain that the
7 purpose of tag lines was to avoid spinning of a cargo
8 during the loading.

9 A The purpose is to control the movement of
10 the draft, one of which may be the spinning motion of
11 the car.

12 Q Is that purpose more predominant as the
13 vehicle is immediately being raised from the pier to
14 keep that vehicle from swinging and striking the side of
15 the ship?

16 A That's one of the points in the draft
17 cycle where you would want to maintain control. As
18 it comes over the hatch coaming, you, at another point,
19 would want to maintain control.

20 Q If the vehicle turns as it's crossing the
21 deck, no object being present, no danger is posed to
22 anyone at that particular time?

23 A No. There is plenty of room as it crosses
24 the deck. It's suspended well up in the air above the
25 coaming, above the hatch and above the coaming.

Q And the next movement that it becomes critical with respect to the loading of the vehicle would be to straighten it out in order to lower it in the hatch; isn't that so?

A That's right. You are familiar.

Q You are familiar with longshore procedure, are you not, Captain?

A Yes, I am.

Q You are also familiar with the safety and health regulations for longshoring, are you not?

A Yes, sir, I am.

Q What is the purpose of those regulations?

A To insure --

MR. KAIN: If your Honor please, I have an objection, if I ascertain -- anticipate what Mr. Lory is driving at. These are statutes and I have an objection to Captain Wheeler being asked to interpret these statutes, if that is counsel's purpose. I submit to your Honor that this is the duty of the Court. I have no objection to him asking him if he is familiar with them, but the interpretation I submit should be for the Court.

THE COURT: Let's see what the question is, Mr. Kain. Maybe it's that and maybe it isn't.

1
2 Go ahead, sir.

3 MR. LORY: May we have the question read
4 back, please.

5 (Question read.)

6 A The purpose of the regulations is to insure
7 that the labor -- the longshoremen will observe minimum
8 safety standards, the minimum of the safety standards.

9 Q Is there anything in those regulations, as
10 you know them, that prohibits a longshoreman standing
11 in the plane of the draft while cargo is being loaded?
12 Is there any specific regulation related to that?

13 A The only one that I know of, that I can
14 recall offhand is where a gangway is attached to the ship
15 and personnel -- longshoremen have to go up and down
16 this gangway and the draft path goes over that gangway,
17 there is a regulation -- a specific regulation as to
18 that that the draft shall not be transited while someone
19 is on the gangway and that is an unusual thing, but
20 ordinarily at a conventional or routine stevedoring
21 operation, it's just common sense.

22 MR. LORY: I move to strike the latter part
23 of the answer.

24 THE COURT: I will strike, "That's common
25 sense", in that it's a non-responsive answer.

Gpa 117

Wheeler-cross

Q Captain Wheeler, the regulation with respect to the draft passing over the gangway, isn't that optional? Doesn't the regulation have the exclusion, "Where unavoidable"?

A Yes. This is one of the -- the ship is so constructed where the gangway would be in the plane of the falls, you don't use that plane of the falls while someone is on the gangway.

Q You told us that you have had some experience as a longshoreman; isn't that so?

A I have had experience as a stevedoring superintendent.

Q You are familiar with the way longshoremen load vessels in the Port of New York, are you not?

A Yes, sir, I am.

Q Are there not occasions during the course of the loading of vessels where it's impossible for the longshoremen to be out of the plane of the draft?

A I cannot conceive of no such condition where a man is forced to stand in the plane of the falls.

Q Assume this, please, Captain, that we have a hatch and we are dealing with the square and the square of the hatch alone for the moment, and we have cargo all around, which is the vacancy in the center,

1 Gpa 118

Wheeler-cross

2 and cargo is yet coming aboard. Assume further that
3 those men cannot leave the immediate area. Would they
4 not also, under those circumstances, be in the plane
5 of the draft?

6 MR. COHEN: Just a moment.

7 THE COURT: I would sustain the objection
8 to that.

9 Q Whether a longshoreman, Captain, was in the
10 plane of the draft would be dependent upon the space
11 available; is that not true?

12 A Generally, yes.

13 Q Captain, will you please refer to the stow
14 plan that you have before you. I don't recall its
15 actual number as an exhibit.

16 Q I think Mr. Kain mentioned Exhibit M.

17 A H.

18 Q With respect to that stow plan on the
19 starboard side at number -- well, before we do that, is
20 the stow plan exact with respect to the location of cargo
21 as to the exact area of the hatch or the ship it
22 occupies or is it just general?

23 A Where the location is indicated -- it says
24 here for example, "New York-Durbin one unboxed auto,
25 two tons." And it shows a rectangular shape in the port

1 forward corner. There, in that case, I would expect to
2 find an automobile in the port forward corner of that
3 space.
4

5 Q But that is general, is it not, with respect
6 to the amount of footage occupied of that particular
7 deck?

8 THE COURT: You mean it's not exact,
9 Mr. Lory, rather than general?

10 Q It's not exact, is it?

11 A No. It's not in scale.

12 Q And proportionately if the diagram or the
13 box or the rectangle used on the diagram occupies one-fourth
14 of the area, it's actual that the actual cargo could
15 use a little more than that area, isn't that true?

16 A Yes. You could draw the same box here and
17 you could put the number 2 and you could show two unboxed
18 autos in that same general area.

19 Q You misunderstood me, Captain Wheeler. I am
20 saying that the rectangle as shown on the stow plan does
21 not denote actually the size or the deck space
22 occupied, but we do know by looking at the deck plan,
23 and will you say that this is a fair statement: By
24 looking at the deck plan we can expect to find an
25 automobile at the forward starboard side of hatch number 2?

1 Gpa 120

Wheeler-cross

2 A The forward port side.

3 Q The port side of hatch number 3.

4 A Right, and nothing between the automobile
5 and the ship's side and nothing between the automobile
6 and the forward bulkhead.

7 Q Now, is there an indication on the stow plan
8 as to what part of the deck this unboxed tractor
9 occupied that was on the starboard side?

10 A No, sir, there is no indication except
11 that it's on the starboard side in the way of number 3
12 hatch.

13 Q With respect to number 4 hatch, do we have
14 drums at number 4 hatch?

15 MR. COHEN: Objection to what we have at
16 the number 4 hatch. That doesn't seem to be involved
17 in this case at all.

18 THE COURT: Mr. Lory, is there some way
19 that you intend to make this relevant?

20 MR. LORY: I will know with two or three
21 questions, Judge.

22 THE COURT: Go ahead.

23 Q Were there drums stowed in number 4 hatch?

24 A Yes. There is roughly 250, 300 drums at
25 number 4.

Gpa 121

Wheeler-cross

1

2

Q And they were stowed --

3

A Wait. Some of them is on the starboard side.

4

5

6

Q Let's stay with whatever was stowed on the starboard side. There were four items of drums stowed on the starboard side, were there not?

7

A That's right.

8

9

10

Q They would be stowed abreast of the hatch and possibly could extend forward of the hatch, isn't that so?

11

12

13

14

15

A Well, anything is possible. The plan would indicate -- not being otherwise clarified, the plan indicates that they are in the way of number 4 hatch, from bulkhead to bulkhead. Number 4 cargo compartment bulkhead to bulkhead.

16

Q I am talking only about the main deck now.

17

A Yes. The bulkhead is under the main deck.

18

19

THE COURT: Captain, there is no question pending before you.

20

21

Q Now, Captain, in response to Mr. Kain's question, you stated that a hydrolic system was vented?

22

23

24

25

A All hydrolic systems that work at atmospheric pressure are vented and this hydrolic system -- this remote system works at atmospheric pressure. Every time the lever is put to neutral, it's vented. It's the

1 same as the telemotor, the steering gear on a ship.
2
3 Every time the wheel is put at midship the system is
4

5 Q Does that mean that every time you put this
6 handle into neutral, that any bubbles or slugs of air
7 that may be on either line, the hoist or the lowering
8 side of it, would not end up in the chamber?

9 A It would end up in that small reservoir
10 because on the vertical --

11 Q It would end up in the small reservoir?

12 A Air entrapped or air present in vertical leads
13 come up, the bubbles come up. If it's entrapped air it's
14 not in a vertical lead because you can't entrap air
15 in a vertical lead, the bubbles come up there.

16 Q Did you have occasion to remove the housing
17 on the control stand on the HUGUENOT?

18 A No, I didn't.

19 Q Did you have occasion to check the records
20 with respect to the maintenance of the forward winches
21 at number 3 hatch aboard the HUGUENOT?

22 A No. I confirmed to myself that they were
23 hydrolic.

24 Q Apart from that you did nothing further, isn't
25 that so?

A Yes.

1
2 Q And you operated those winches at that
3 particular time?

4 A I did, yes, sir.

5 Q Now, Captain, in order for, as you say, that
6 air to be vented to go back into the reservoir when the
7 handle went into neutral, there would have to be space
8 in the reservoir to accommodate that air, isn't that
9 so?

10 A There is an orifice -- if you turn the
11 board around there is an orifice and it was mentioned
12 here. It was called a check-valve by the engineers.
13 There is an orifice that allows the system --
14 designed into it to allow it to be vented
15 every time the lever is put to neutral.

16 Q Is that valve automatic?

17 A In that --

18 Q Is it automatic, Captain?

19 A In that it's actuated when you move the
20 lever to neutral, it's automatic. You can't stop it,
21 no.

22 Q If that is so, Captain, wouldn't it be a fair
23 statement that these winches cannot go out of phase?

24 A No. Only the air -- air in the vertical
25 line is not entrapped air. There can be entrapped air

1 Gpa 124

Wheeler-cross

2 in the system and that causes the out of phase.

3 Q But if you have out of phase air entrapped
4 in the system and the system is now out of phase, you
5 can get an erratic reaction with respect to the operation
6 of the winch, isn't that so?

7 A In that case you put both levers in neutral
8 and you open your adjustment valve.

9 MR. LORY: I move to strike the answer.

10 Q Can you or can you not get an erratic action
11 of the winch?

12 A It can be erratic.

13 Q Yes, or no, please, Captain.

14 A Yes. It can be erratic, and the slave will
15 always lag the master. Always.

16 Q Isn't it true, Captain, that the fact that
17 air can rise in the reservoir, as you mention it,
18 indicates that there is an absence of some of the fluid
19 in the system?

20 A When air bubbles come up, they are so minute
21 that if you were sitting there watching them you couldn't
22 see them, but if they accumulate --

23 Q Captain, you are not answering my question.
24 In order for air to be in the system, isn't it a fact
25 that there has to be some leakage or seepage from the system?

1 A Not necessarily. I told you. I don't know
2
3 about this system, but --

4 Q You don't know about this system. I am only
5 concerned about this system.

6 A Your question wasn't related to this system.
7 There was a general question.

8 Q My questions are related to this system and
9 in response to your statements to Mr. Kain with
10 respect to general systems as related to this system.

11 A In this system, any air would have to be
12 seepage or leakage, not chemical breakdown.

13 Q Okay, Captain, thank you.

14 CROSS EXAMINATION

15 BY MR. COHEN:

16 Q Captain Wheeler, I think you said in answer
17 to one of Mr. Kain's questions that it's a fundamental
18 rule of safety that a person should not stand in the
19 plane of the falls, just as it's a fundamental rule of
20 safety that a man shouldn't stand in the bite of a line.

21 A That's right.

22 Q Now, tell the jury what you mean, please, by
23 not standing in the bite of the line.

24 A Where a line, a piece of rope is being
25 tensioned and it's led not in a straight line, it's led

1 from the resistance through a block or a roller and
2 it's being pulled this way -- there is a change of
3 direction, then anyone standing in this bite -- the
4 distance between this part of the line and that part of
5 the line (indicating) would be standing in the bite.
6 If he stands on the other side of the line it's perfectly
7 safe, because if the line carries away or something
8 happens, like the bow string on an arrow, the line is
9 going to come towards in this direction. (Indicating.)
10

11 Q And that's a fundamental rule of safety,
12 is that right?

13 A Yes.

14 Q Is there anything in the safety and health
15 regulations that says you shouldn't stand in the bite
16 of the line?

17 A Not specifically.

18 Q So whether or not there is something in that
19 pamphlet that Mr. Lory was talking to you about, it
20 doesn't mean that your testimony was in error, does it?

21 A No. Not at all.

22 Q Now, you talked about people not standing --
23 longshoremen not working in the plane of the falls, and
24 if I understand you correctly that's because if you
25 are in the plane of the falls you are in the path of the

Gpa 127

Wheeler-cross

draft; is that right?

A That's right, or under it, yes.

Q Under it. The cargo that's being taken in has to travel in a path determined by where those two booms are positioned, right?

A That's right.

Q And it's dangerous to stand underneath the path that the cargo is going to be taking; is that right?

A That's correct.

Q Just as it's fundamentally dangerous to stand in the bite of the line; is that right?

A That's correct.

Q That danger applies not only to longshoremen, but it's equally dangerous for seamen to stand in the path of the draft, isn't it?

A Yes, sir, anyone.

Q And it would be equally improper for carpenters to be working in the path of the draft, wouldn't it?

A That's right.

Q You said to us in giving us your qualifications at one point, -- if I recall correctly, you came back from sea duty and you worked as a stevedoring

1
2 superintendent?

3 A That's right.

4 Q For what company did you work for?

5 A John W. McGrath Corporation.

6 Q Does John W. McGrath Corporation happen to
7 have a subsidiary corporation that does work as a marine
8 carpentry firm?

9 MR. LORY: Objection, your Honor. It's
10 wholly irrelevant.

11 THE COURT: No, I will allow it.

12 A At present they do. When I was working for
13 them we had a carpentry department.

14 Q What's the name of the present subsidiary,
15 the marine carpentry subsidiary of John W. McGrath?

16 A I believe it's New Jersey Export Corporation.

17 Q New Jersey Export Corporation?

18 A I believe that's the proper name.

19 Q Are you familiar with the practice regarding
20 the stowage of automobiles which are destined for ocean
21 voyage?

22 A Yes, sir, I am.

23 Q How is that done?

24 A The cars -- the automobiles are usually
25 stowed -- I am going to leave out their preparation for

1 loading.

2 Q Okay.

3 A They are picked up in slings, placed into
4 the ship and they are usually positioned in a fore and
5 aft manner so that the roll of the ship, port to
6 starboard, will not affect the cars too seriously, and
7 then they are chocked. Each car is chocked individually.
8 A 2X4 is laid outside of the back wheel and front wheel
9 on each side and then there are cross-beams nailed to
10 those longitudinals so that the car is effectively
11 chocked and each car being so chocked, then those
12 cradles that the cars are in are laced together with
13 more lumber so that this cradle is connected to that
14 credle so when we got 40 cars in the deck of a ship
15 they are all tied together and they rest there and they
16 are braced off from the ship's side and they are braced
17 off from the fore and after bulkheads.

18 Q That chocking work that you have described,
19 is that done by longshoremen or by some other trade?

20 A They are done by -- that work is done by
21 marine carpenters.

22 Q And longshoremen are prohibited from
23 doing that work, aren't they?

24 A By the union agreement.

1 Gpa 130

Wheeler-cross

2 Q By the union, right?

3 A Yes.

4 Q The marine carpenters belong to the same
5 general union, the ILA, do they not?

6 A Yes.

7 Q But they have their own separate local; is
8 that correct?

9 A That's correct.

10 Q Is it the custom and practice for marine
11 carpenters to bring their own lumber aboard a ship
12 to do this chocking?

13 MR. LORY: If your Honor please, let me
14 object to the form of the question. He is making this
15 witness his own and I think he is leading him to
16 excess.

17 THE COURT: I am going to sustain the
18 objection in any event.

19 Q Where does the lumber, if you know, based
20 on your experience, that marine carpenters use for chocking
21 come from?

22 A If there is insufficient lumber aboard the
23 ship they obtain whatever they need from the pier, from
24 shore.

25 Q Then is it up to them to get the lumber down
into the hatch where it's needed?

1
2 A Yes.

3 Q What's the proper way for them to do that?

4 A If it's a quantity of lumber, you are going
5 to chock a quantity of cars, you make up a draft on the
6 dock and you tell the stevedoring superintendent that
7 you want that lumber put aboard the ship and when it's
8 convenient they will take a draft and put it aboard the
9 ship wherever you ask them to put it, on deck or down
10 in the hold, it depends.

11 Q Is it proper for them to have one of their
12 number standing on the main deck throwing pieces of
13 this lumber down into the upper 'tween deck while
14 longshoremen are working?

15 A No, it's not proper.

16 Q Why is that not proper?

17 A Because it might take an unusual bounce
18 and hit somebody.

19 Q The carpenters wanted to pass lumber down
20 from one deck level to another; in your opinion should
21 they do that work at some point other than under the
22 plane of the falls?

23 MR. LORY: Objection, your Honor. Again,
24 counsel --

25 THE COURT: I think this is cumulative.

1 Gpa 132

Wheeler-cross

2 Mr.Cohen.

3 MR. COHEN: Okay, your Honor.

4 Q Captain Wheeler, were you in Court during
5 this trial when Mr. Scotto testified?

6 A Yes, sir, I was.

7 Q Do you recall hearing Mr. Scotto testify that
8 at the number 3 hatch on the main deck there was a
9 quantity of drums that were stowed from the forward
10 end to the after end, except for a space alongside the
11 rail of approximately a foot and a half and except for
12 a space a longside the coaming of two to three feet.
13 Do you recall hearing that testimony?

14 A Yes.

15 Q And he testified that those drums were about
16 four feet high.

17 A I heard there was some difference in the
18 size of the drum.

19 Q Captain, if there were such a cargo stowed
20 on the main deck of the EUGUENOT as Mr. Scotto
21 described abreast of the number 3 hatch as he described ,
22 would you expect that cargo to show up in the stow plan?

23 A Yes, sir, it would.

24 Q Does any such cargo show up in the stow
25 plan as being present on the main deck alongside the

1 Gpa 133

2 number 3 hatch?

3 A Only the tractor. No drum cargo was on
4 that deck.

5 Q No drum cargo at all?

6 A None. On port or starboard side.

7 Q Mr. Lory questioned you about the stow plan
8 and you said to him that if there is an automobile shown
9 in the forward port corner in the stow plan you would
10 expect to find it there; is that right?

11 A That's right.

12 Q And if it's shown in the forward port corner
13 of number three hatch, you would expect to find it in the
14 number three hatch, not in the number four hatch, isn't
15 that right?

16 A That's right, in the number three hatch.

17 Q If there is a quantity of drum cargo stowed
18 on deck alongside the number 3 hatch you would expect
19 to find it on that plan alongside the number 3 hatch, not
20 the number 4 hatch; is that right?

21 A That's right.

22 Q That plan shows where the cargo was taken
23 aboard the ship and where it's destination is; is that
24 not true?

25 A Yes, sir, that is right.

Gpa 134

1
2 MR. LORY: Again, your Honor, counsel is
3 leading.

4 THE COURT: I think this is an innocuous
5 area. Go ahead.

6 Q Captain, good longshoreman practice calls
7 for the winch operator to bring a draft across a ship
8 so that it shouldn't bang against either the rail or the
9 coaming, does it not?

10 A That's true, yes.

11 Q At the same time there is a danger, is
12 there not, if he should raise that draft too high?

13 A Yes, there is.

14 Q Please explain to the jury what the danger
15 of raising the draft too high is.

16 A Because of the angle that the fall makes.
17 If I may show it on the model.

18 THE COURT: All right.

19 A If the draft is raised so that the
20 junction of the falls, the point where the falls are
21 joined together, if this internal angle at exactly 120
22 degrees, the fall weight that's on the hook is on each
23 fall, at 150 degrees about two times the weight of the
24 draft is on each fall, so the falls are, in effect, pulling
25 against each other in accomplishing the lift of the

1 Gpa 135

Wheeler-cross

2 package, of the draft. If you go high enough, at
3 170 degrees, almost a straight line, 11 times the weight
4 of the draft is on each fall. So this is the way you
5 pull down the booms. If you go too high you overload the
6 guys and the booms and there is a toppling and something
7 has got to give.

8 Q That's what you call a toppling or high-lining
9 situation?

10 A That's what it's called.

11 Q And that's a situation to be avoided, is
12 that right?

13 A Right.

14 Q Captain, as an expert called to testify
15 about good maritime practice, at what height would you
16 say that a draft should be brought across the rail and
17 the coaming so as to be safe?

18 A An automobile?

19 Q By how much distance should it clear the
20 coaming?

21 A It should clear the rail and the coaming
22 by about two or three feet.

23 Q So that good winchmanship, if I can use
24 that term, would call for the winch operator in a case
25 like this to have the automobile coming across the

1 Gpa 136

Wheeler-cross /recross

2 coaming at a height of approximately six or six and
3 a half feet above the deck; is that right?

4 A That's right. The coaming is four feet, so,
5 two or three feet.

6 Q Four feet two inches we have been told.

7 A That's right.

8 Q If he brings that automobile over the coaming
9 at a height of six feet above the deck, he is doing his
10 job properly; is that right?

11 A That's right.

12 Q That would be good winchmanship and good
13 stevedoring practice; is that correct?

14 A That's right.

15 MR. COHEN: Thank you.

16 MR. KAIN: No questions.

17 RECROSS EXAMINATION

18 BY MR. LORY:

19 Q Just one thing, Captain Wheeler.
20 Getting back to the stow plan, the stow plan does
21 indicate if there was drums on the starboard side of
22 number 2 hatch as well as on the starboard side of
23 number 4 hatch?

24 A Number 2 is port and starboard, yes. Yes.

25 Q Can you tell us approximately how many drums were

1 stowed on the starboard side of number 2 hatch?

2 A It doesn't give a breakout. It says
3 there is about 250 drums on both sides. I don't know --
4 it's not always evenly distributed. Sometimes
5 it's more on one side than on the other.
6

7 Q Is it a fair statement that there were drums
8 stowed abreast of number 2 hatch and drums stowed
9 abreast of number 4 hatch?

10 A Yes. The plan shows that.

11 Q But there is no definition in the plan as
12 to the number as to each side, port and starboard,
13 whether there were more on port or starboard, is there?

14 A At number 2, no. At number 3 it shows
15 those four parcels were all on the starboard side -- I
16 mean at number 4. I'm sorry.

17 Q And also with respect to this tractor that
18 was on the starboard side, that is not shown there
19 whether it was in the forward section of the hatch or
20 the after section, does it?

21 A It doesn't show that, no.

22 MR. LORY: That's all.

23 THE COURT: You may step down, sir, thank
24 you.

25 (Witness excused.)

1 Gpa 138

2 MR. KAIN: If your Honor please, at this
3 time I propose to read excerpts from the Chief Engineer,
4 Mr. Pitt's testimony. If I can beg your Honor's
5 indulgence in borrowing the Court's copy for Mr. Molanphy.

6 THE COURT: You may.

7 Incidentally, Mr. Cohen and Mr. Lory,
you reserve such portions of Mr. Matthee's testimony --

9 MR. COHEN: Yes. I wanted to read some and
10 I thought your Honor wanted me to read it on my case.

11 THE COURT: This is other than matters
12 we discussed in the robing room.

13 MR. KAIN: With respect to Mr. Matthee,
14 I read the entire deposition, except for those matters,
15 your Honor.

16 THE COURT: All right, that answers that
17 question.

18 MR. KAIN: Would your Honor remind the jury
19 that I am reading just portions of this because a large
20 portion of it was read by Mr. Lory as part of his case.

21 THE COURT: Yes. This is Mr. Pitt, who was
22 what, the Chief Engineer?

23 MR. KAIN: The vessel's Chief Engineer.

24 THE COURT: The Chief Engineer. Mr. Lory
25 read portions on his part of the case. Mr. Kain is now

1 Gpa 139

"Pitt"

2 reading other portions and in order to put it in context
3 there may be a slight duplication.

4 MR. KAIN: Page 6, line 15.

5 "Q When did you join the South African
6 Huguenot?

7 "A July 1966."

8 Line 20.

9 "Q Were you aboard when the ship was delivered
10 by the building yard?

11 "A Yes."

12 Page 7, line 10.

13 "Q Were you employed aboard the vessel on
14 November 24, 1968?

15 "A Yes.

16 "Q And at what capacity were you employed aboard
17 the vessel on November 24, 1968?

18 "A As Chief Engineer."

19 M.R. KAIN: If your Honor please, may I
20 ask counsel for the record, the next portion I propose
21 to read was that portion of the deposition whereby
22 Mr. Pitt identified the vessel's engine room log books
23 and such. It seems to me that at this point there is
24 no useful purpose and unless counsel wishes me to do so,
25 I have no intention of doing it.

1 Gpa 140

"Pitt"

2 THE COURT: I agree.

3 MR. LORY: The plaintiff does not.

4 THE COURT: All right, sir.

5 MR. KAIN: Page 9, line 19.

6 "Q Mr. Pitt, do you recall where the South
7 African Huguenot was on November 24, 1968?

8 "A In New York.

9 "Q Do you remember where she was in New York on
10 that date?

11 "A Pier 6, Brooklyn."

12 Page 10, line 20.

13 "Q Do you remember what day she came
14 into the Port of New York?

15 "A She came in on the morning of the 23rd.

16 "Q Do you remember when the vessel sailed from
17 New York?

18 "A About 9:00 or 10:00 on the evening of the 24th.

19 "Q Where did she sail for, do you recall?

20 "A Capetown."

21 Line 15, page 11.

22 "Q On November 24, 1968, did you witness any
23 accident involving a longshoreman aboard the vessel?

24 "A No, I -- No. "

25 Page 12.

Gpa 141

"Pitt"

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"Q Mr. Pitt, I show you this book and I ask you, if you can, sir, to tell me what it is.

"A It's a Fukushima book for the -- containing the test certificates and spare gear on board the S.A. HUGUENOT."

Page 13, line 3.

"Q Does it also contain the final drawings for the cargo winches aboard the South African Huguenot?

"A Yes.

"Q Have you examined this book?

"A Yes.

"Q On November 24, 1963?

"A Yes. "

MR. KAIN: At that time, your Honor, the book was marked for identification. I would like at this time to mark it in evidence.

THE COURT: Any objection?

MR. LORY: Which book is that?

MR. KAIN: Final drawings.

MR. LORY: No objection.

THE COURT: It may be received.

MR. KAIN: I think it's already marked G for identification, if your Honor please, on this record.

(Defendant's Exhibit G received in evidence.)

Gpa 142

MR. KAIN: Page 15, line 23.

"Q Mr. Pitt, on November 24, 1968 how many cargo booms were located at the vessel's number 3 hatch aboard the South African Huguenot?

"A Five.

"Q Could you tell me how many cargo booms were located in the forward end of number 3 hatch?

"A Two.

"Q And how many at the after end?

"A Three."

Line 14.

"Q How many winches were there for two five-ton booms at the forward end of the hatch?

"A Four. Two topping winches and two working winches.

"Q When you say topping winches, what was the purpose of these winches, if you know, Mr. Pitt?

"A It's to top the booms to the correct angles prior to loading.

"Q For discharging?

"A For discharging.

"Q Were these forward or where were the cargo winches located at the forward end of number 3 hatch?

"A On top of a pump room -- pump room or mast house.

Gpa 143

"Pitt"

Line 20.

"Q Was it possible to operate these cargo winches at the forward end of number 3 hatch on November 24, 1968 by means of a remote system?

"A Yes.

"Q And can you tell me what the remote system is or can you give me a general description of the remote system?

"A The remote system is situated between or in the center between the port and starboard winches and --

"Q What is its purpose?

"A Its purpose is to allow both port and starboard winches to be operated by one man.

"Q Could you tell me, this remote system, how does it permit the operation by one man?

"A It's a system of a hydrolic remote operation where by one man can control the hoisting and loading of the port and starboard winches.

"Q Mr. Pitt, if I refer to the -- what you call the working cargo winches as the manual system, would you know what I was referring to?

"A Yes.

"Q Is it possible to operate these working winches by means other than the remote control system to

1 Gpa 144

"Pitt"

2 which you have just referred?

3 "A They can be worked manually by having one
4 man at the station by the working winch itself, one man
5 at each port and starboard winch. As a matter of fact,
6 you need two men.

7 "Q One man at each for a total of two men?

8 "A One man at each for a total of two men."

9 Page 20, line 22.

10 "Q And with respect to the two cargo winches
11 that we have been discussing, did each of those cargo
12 systems, that is port and starboard cargo winches, did
13 each of these winches have a separate remote system?

14 "A Yes.

15 "Q Was each of these remote control systems
16 separate and distinct or were they inter-connected in
17 any way?

18 "A On the remote system?

19 "Q On the remote system.

20 "A They were not connected in any way.

21 "Q This gravity tank that you referred to as
22 being I think you said about 40 feet above the suction
23 side of the supplied pump for the manual system,
24 is that also sometimes referred to as a header tank?

25 A A header tank.

Gpa 145

"Pitt"

866

"Q While you were Chief Engineer aboard the South African Huguenot, did you follow a practice of routine maintenance with respect to these winches?

"A Yes.

"Q That is with respect to both systems, the manual system and the remote system?

"A Yes.

"Q Would you describe for me what the routine maintenance practice you followed was with respect to the manual system.

"A Every northbound passagewe would -- northbound passage, we would free the brakes on the manual winches and make sure that the brakes were operative. We would check out the oil levels in the pump gear boxes. We would insure that the electrical starting mechanisms were in good order and the electric motors and magnetic filters we used to clean in about six months intervals, make sure the magnetic filters were clean.

"Q Could you tell me, Chief, what you mean by a magnetic filter?

"A A filter situated on the suction side of the pump for extracting any metal-like particles that might be entrapped in the main hydrolic system."

Gpa 146

"Q What was your practice with respect to the maintenance of the remote system, if any?

"A Similarly on the northbound voyage we would prime through the remote system to make sure that no -- to extract any air that might have been entrapped in the remote system. Similarly on the brake system, the remote brake system, we prime the system through to extract any air that might have been entrapped in the remote brake system."

Page 25, line 10.

"Q On the northbound voyage, when you say the northbound voyage, are you referring to after the ship sailed from South Africa?

"A Yes.

"Q And that would be when she was en route from South Africa to the United States?

"A Yes.

"Q And this maintenance you are referring to was accomplished on the northbound voyage; is that correct?

"A Yes."

Page 27, line 9.

"Q If I understood you correctly, you testified that you had a routine maintenance that you followed on the northbound leg of the voyage.

1 Gpa 147

"Pitt"

2 "A Yes.

3 "Q While you were en route from South Africa
4 north?

5 "A Yes.

6 "Q And you mentioned that you primed through the
7 remote system?

8 "A Yes.

9 "Q To eliminate any air in the system; is
10 that correct?

11 "A Yes.

12 "Q My question is this: Having done this
13 routine maintenance on the northbound leg of the voyage,
14 was it ever necessary at various ports of call in the
15 United States before you left the United States to
16 return to South Africa to add any hydrolic fluid to top
17 off these remote systems; in other words, to add
18 hydrolic fluid to the remote control system?

19 "A Occasionally, yes.

20 "Q What would be the reason why it was
21 necessary to add hydrolic fluid on these occasions?

22 "A Well, on any hydrolic system on board a
23 ship, inevitably seepage does occur through joints and
24 through this reason that air can be entrapped in the
25 remote system occasionally and this air would have to be

1 Gpa 148

2 extracted.

3 "Q Can you tell me what the effect would be of
4 air being entrapped in the remote system?

5 "A Any pocket of air would cause a cushioning
6 effect and allow any operation to become sluggish or
7 more easy. There is no positive (indicating) action of
8 any hydrolic fluid forcing one body in one direction.

9 "Q Was this a gradual process, this loss of direct
10 action?

11 "A A gradual process, yes.

12 "Q Does the entrapment of air in the system make
13 the remote system inoperative?

14 "A Not right away. It's a gradual process.

15 "Q Will the remote system operate, for
16 example, with no hydrolic fluid?

17 "A No.

18 "Q Will it operate with some hydrolic fluid?

19 "A Not very well.

20 "Q If I had a small amount of hydrolic fluid
21 lost from the system, would the remote system operate?

22 "A Yes."

23 MR. KAIN: If your Honor please, I propose,
24 unless counsel objects, to delete the witness' question
25 to me after the, "Yes," at that point.

Gpa 149

"Pitt"

870

THE COURT: Mr. Lory, any objection?

MR. LORY: No objection.

Page 29, line 17.

"Q Let me ask you, Chief, how is the cargo winch driven?

"A Direct.

"Q On November 24, 1968.

"A It's a direct connection between the winch motor and the winch drum.

"Q Was there any gearing between the hydrolic motor and winch drum?

"A No. "

Page 30, line 13.

"Q And what would be the effect of a small amount of air in the system?

"A It would cause out of phase operation; that is forgetting some movement from the transmitter. You would need to push it over slightly more to get the same movement on the local system or the manual system.

"Q When you say out of phase, Mr. Pitt, are you referring to a lack of synchronization between the controls on the remote system and the controls on the manual system?

"A Yes."

Gpa 150

"Pitt"

871

Page 31, line 22.

"Q Are you saying that the manual system, if there is a small amount of air, will not accurately follow the remote system?

"A Yes.

"Q That there will be a difference in the number of degrees that you would have to turn the handle on the remote system to get, say I think you used the expression five degrees on the manual system; you might have, for example, to move the remote system handle ten degrees; is that what you mean?

"A Yes."

Page 35, line 9.

"Q How was the speed controlled, the speed of the winch drum, controlled by the control handle on the remote system?

"A well, the control handle on the remote system controls the handle on the manual system, and the handle on the manual system operates the main hydrolic valve (indicating) which supplies oil in whichever the direction the winch has to operate.

"Q Would it be an accurate statement to say that the speed of the winches is controlled by the amount of the hydrolic pressure?

Gpa 151

"A The amount of hydrolic fluid delivered. yes.

"Q To the motor?

"A To the motor.

"Q And the amount of the hydrolic fluid delivered to the motor, is determined by what?

"A By the amount the valve -- the control valve in the manual system is opened.

"Q And the movement -- I believe you have just told us the movement of the manual valve is controlled by the movement of the remote system when the remote system is in operation; correct?

"A Yes.

"Q Are there any hoisting or lowering speeds indicated on the control levers for the manual system?

"A No.

"Q All right.

"A Any direction, hoist and lower.

"Q I believe you testified a few minutes ago that the port and starboard remote systems for the cargo winches at the forward end of number 3 hatch, these two five-ton winches were completely separate systems; is that correct?

"A The remote systems, yes.

"Q They are in no way dependent on each other,

1 Gpa 152

"Pitt"

2 the two systems, the port and starboard remote systems?

3 "A No.

4 "Q There are no inter-connecting lines between
5 these two systems?

6 "A Yes."

7 Page 37, line 5.

8 "Q Let me ask you, would the entrapment of
9 air, say, for example, on the starboard remote control
10 system have any effect on the port remote control system?

11 "A No.

12 "Q Would the entrapment of air in the port
13 controlled system have any effect on the starboard remote
14 controlled system?

15 "A No.

16 "Q Was there a braking system of any kind
17 installed in the manual system for these five-ton
18 winches at the forward end of number 3 hatch for the
19 South African Huguenot?

20 "A Yes.

21 "Q Could you describe how this braking system
22 worked?

23 "A It's a -- the conventional brake band type
24 around a brake, you know, a brake itself with a band.

25 "Q Yes.

1 Gpa 153

"Pitt"

2 "A And this is operated manually. It's
3 situated next to the brake, to the winch drum, and this
4 brake can be operated manually as well as remotely.
5 The remote operation of the brakes is done at the same
6 control station where the winches are operated. The
7 brake levers are by the operator's feet, but there is
8 also the manual operation next to the winch as explained
9 by the drum.

10 "Q If you were to put the control levers for
11 the remote system in the vertical position, what would
12 be the effect on the winch, the cargo winch?

13 "A IT would stop. It would be in a stopped
14 position and the winch would stop.

15 "Q The stopped position on these control levers
16 was vertical?

17 "A Vertical.

18 "Q And how about the manual system?

19 "A Also vertical.

20 "Q If in the course of the operation of the
21 remote system the operator were to remove his hands
22 from the control levers, what would happen?

23 "A The lever on the manual system would come to
24 the stopped position automatically.

25 "Q Let's see if I understand you correctly.

1
2 If he took his hands off these levers, it would
3 automatically return to the stopped position?

4 "A Yes.

5 "Q If in the operation of the remote control
6 system the remote control system, through the loss of
7 hydrolic fluid should cease to function, what would be
8 the effect, if any, on the manual system?

9 "A It would come, bring the winch to a stopped
10 position.

11 "Q And how would this take place; in other
12 words, how would it bring the winch to the stopped
13 position?

14 "A There is a spring arrangement on the control
15 valve of the manual -- of the main valve in the manual
16 system that returns it to neutral, and there is also
17 a feedback valve in the remote system that returns
18 it to neutral or returns it to the stopped position.

19 "Q So that if I understand you correctly, if
20 for any reason the remote system failed to function,
21 the system would automatically return to neutral?

22 "A Yes."

23 Page 40, line 21.

24 "Q Now, Chief, when you sailed from New York
25 on the South African Huguenot, sailed from New York on the

Gpa 155

evening of November 24, 1968, did you receive any instruction from anybody with respect to the cargo winches at the forward end of number 3 hatch?

"A I was instructed by the Captain that I must not take -- not to touch the winches or undergo any repairs whatsoever to the winches on the forward end of number 3 hatch.

"Q Were these instructions obeyed?

"A Yes.

"Q Was there any work done on these winches after the ship sailed from New York and prior to its arrival in South Africa?

"A No.

"Q Did the Captain give you any reason for not doing anything to these winches and not working on these winches?

"A It was something about an accident that had happened.

"Q Do you know whether those winches were surveyed and tested upon the vessel's arrival in South Africa?

"A Yes.

"Q Yes, you know, or yes, they were surveyed and tested?

"A Yes, they were surveyed.

"Q Were they also tested, if you know?

"A Yes.

"Q Were you present when these tests were made
and when this survey was conducted?

"A No.

"Q Mr. Pitt, during the four years or approximately
four years that you were Chief Engineer of the South
African Huguenot, except for a routine maintenance,
were any repairs made to the cargo winches at the forward
end of the vessel's number 3 hatch?

A No."

MR. KAIN: I believe that concludes my
reading.

THE COURT: Mr. Lory, any additional
questions?

MR. LORY: I just want to check one
thing.

THE COURT: Mr. Cohen?

MR. COHEN: No, sir.

MR. LORY: I thought I had marked it.

THE COURT: Well, ladies and gentlemen,
we will take our mid-morning recess at this point.

(Recess.)

1 Gpa 157

(In open court, jury present.)

2 MR. LORY: I have nothing to read or
3 add from Mr. Pitt's testimony.

4 MR. KAIN: If your Honor please, may I
5 circulate these numerous photographs among the jury
6 that have been marked in evidence?

7 THE COURT: You may.

8 (Exhibits shown to jury.)

9 MR. KAIN: With that, if your Honor please,
10 the defendant rests.

11 May I reserve my motions until the end of
12 the third-party defendant's case?

13 THE COURT: You may.

14 MR. COHEN: May I similarly reserve
15 motions?

16 THE COURT: You mean with regard to --

17 MR. COHEN: With regard to the complaint
18 and the third-party complaint.

19 THE COURT: You may.

20 Would you gentlemen come to the side bar
21 while the jury is looking at the exhibits and we will
22 discuss a certain matter.

23 (At the side bar.)

24 THE COURT: This is my view with regard
25 to the Andre problem, if I may call it that. Mr. Cohen,

Gpa 158

1 I will not permit you to use the statements to an
2 officer or boatswain, unless Mr. Andre has first taken
3 the stand and was asked about the fact and denied it.
4 If he takes the stand and admits the fact that it was
5 his act that dropped a board on somebody below, then you
6 have your proof and the statements may come in on other
7 theories, or they may not come in on other theories.
8 If he denies that this is what he did, I will then
9 allow the statements to be used and I will allow you to.
10 examine him as to statements to others on the theory
11 of this lentendre 21 New York Second 518. I will permit
12 it to be used as affirmative evidence of the fact which
13 the jury can conclude that it in fact happened notwithstanding
14 his denial. Now, following that, it may or may not
15 be appropriate. and let's consider it at the time, to use
16 the officer and the boatswain to corroborate this.

17
18 I want to keep flexible on that score. I am
19 inclined to think that it would be merely cumulative and
20 therefore permissible to do it. I am saying that
21 before we get into any of the statements to others, the
22 witness has got to take the stand and say it either
23 happened or it didn't happen and then you can use
24 the statement against him, use his statements against
25 him. I say that the testimony that we took yesterday,

Gpa 159

rather than your reading it to the jury, I think you should regard it as in the nature of a deposition which you can use to keep the witness in line should he say things that you believe are contradictory, but I do not believe that it itself should be submitted to the jury since the witness is here. It may well be that he may affirm or deny some part of what he said yesterday appropriately in the flow of examination and that can be read to the jury, but that's my view on the Andre situation. I would suggest that for this whole area, and since you have everybody here, let's get Andre on the stand and after laying such foundation as you want to that he is there, what his work is, what he does and so on and so forth, go on to the question did you drop a plank on this man -- on somebody in the number 3 hatch on November 24th. Then he says yes or no and we will go from there.

MR. COHEN: I don't disagree with most of what your Honor said, but what I would like to do is put Andre on the stand and initially read to the jury the testimony that he gave yesterday outside of their presence because in that testimony itself there were a number of contradictions -- there were inconsistent statements that he made just in yesterday's session,

1 Gpa 160

2 where your Honor may remember he initially denied that
3 he was even aboard the ship on those two days; he
4 initially stated he was working on the dock and it was
5 only after further questioning that he came along to
6 admit that yes, he was on the ship. There are things
7 like that, the flavor of which they will not have any
8 more unless I can read this testimony to them. It's not
9 that I am trying to establish --

10 THE COURT: You can say, "Didn't you yesterday,
11 in testimony taken out of the presence of the jury,
12 say you weren't on the vessel?"

13 MR. COHEN: I am not trying to establish
14 affirmatively that he wasn't on the vessel.

15 MR. KAIN: You can ask him affirmatively today
16 was he on the vessel.

17 MR. COHEN: You missed the point. Yesterday
18 when asked for the first time he said no, he worked on
19 the dock for the two times and then he changed.

20 MR. LORY: Because of a misunderstanding
21 of what the question meant.

22 MR. COHEN: The fact that he made a change,
23 and it was dragging the questioning out of him
24 through further questions which the jury won't get. I
25 obviously don't want to establish that he wasn't on the

Gpa 161

P32

1 ship, but the fact that he initially was trying to give
2 us that impression and then changed is something the
3 jury won't get if I don't read this thing just to
4 bring the jury up to date and then I can go on from
5 there.
6

7 MR. LORY: If your Honor please, there was
8 nothing inconsistent in the testimony yesterday. I
9 have not read the transcript, although I do have it. I
10 think there was some misunderstanding on the part of
11 the witness due to the fact that he had earlier worked on
12 the dock and then later came aboard the vessel.

13 MR. COHEN: Ed, you are going to say
14 everything that a man says that at some other time it
15 doesn't tie in is a misunderstanding and that is some-
16 thing that you might argue successfully to the jury.

17 THE COURT: It's page Rgjjw 3 and I think
18 I will allow you to use this along the way treating
19 him --

20 MR. LORY: If your Honor please, the denial
21 was with respect to both days, not solely to the 24th.

22 MR. KAIN: It seems to me you can use it to
23 confront him with anything which is inconsistent.

24 THE COURT: I think so, too. You can ask
25 him, "Didn't you, when I asked you about this yesterday,

1 Gpa 162

2 first deny you worked on the vessel?"

3 MR. KAIN: If he says no, you can read it
4 to him.

5 MR. COHEN: Do you think anybody is prejudiced
6 if I start off by reading what he said yesterday in
7 Court and then continue on from there?

8 THE COURT: Mr. Lory, do you have any
9 objection to this being read?

10 MR. LORY: It would be tantamount, your
11 Honor, to reading a transcript of a deposition before
12 the witness testifies. The witness is here. I would
13 believe that the best procedure to follow would be to
14 interrogate him de novo as if no testimony had been
15 given.

16 THE COURT: All right.

17 (In open court.)

18 THE COURT: Ladies and gentlemen of the
19 jury, have you got some things you want to look at yet?

20 While you are looking, just let me say to
21 you that the defendant and third-party plaintiff,
22 South African Marine Corporation, has concluded the
23 evidence that each is to provide to you at this time
24 and when the evidence resumes, it will be that of the
25 International Territorial Operating Company, which is the

Gpa 162a

third-party defendant here, as to which you were
advised at the beginning there are issues to be litigated
between South African Marine and ITO.

All right, Mr. Cohen, if you will proceed,
please.

MR. COHEN: May we call Mr. Andre, please,
your Honor.

THE COURT: Yes.

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PAGES 17-38a LEFTHAND NUMBER
" 885-906a RIGHTHAND NUMBER

PREVIOUSLY DELIVERED MAY 29th

WIT: JOSEPH ANDRE

1 rcl7

2 J O S E P H A N D R E, called as a witness by

3 the third-party plaintiff, being first duly sworn,

4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. COHEN:

7 Q Mr. Andre, what is your occupation?

8 A Marine carpenter.

9 Q For how long have you been a marine carpenter?

10 A 12, 13 years.

11 Q As a marine carpenter, are you a member of the

12 IIA?

13 A Yes, I am.

14 Q Were you a marine carpenter on November 24, 1969?

15 A I believe I was.

16 Q I'm sorry, 1968.

17 A Yes.

18 Q On that date by whom were you employed?

19 A New Jersey Export Marine Carpenters.

20 Q Is that a subsidiary company of John W. MacGrath

21 Stevedoring Company?

22 A Yes.

23 Q On November 24, 1968 where were you employed?

24 A I believe I was employed on Pier 6 Port Authority.

25 Q Were you working on board a particular ship?

1 rql8 Andre-direct

2 A That was South African Marine.

3 Q Do you recall if the ship that was being worked at
4 the time was named the Huguenot?

5 A I believe it was. I am not sure what the name of
6 this ship was.

7 Q Had you been working on that ship the day before
8 as well?

9 A Yes, I had.

10 Q What kind of work generally were you doing aboard
11 the Huguenot?

12 A We secure the cargo above and below decks.

13 Q How many carpenters were working with you?

14 A Maybe 8, 10, 12 carpenters.

15 Q And they all worked for New Jersey Export Marine?

16 A Yes, sir.

17 Q This job of securing the cargo, could he describe
18 to the jury generally what that consisted of.

19 A They put -- stow cargo aboard the ship and the ship
20 goes to sea. If the ship hits rough weather this cargo can
21 be damaged or it can put a hole in the ship and we secure
22 it with wires. We lash these pieces to the ship so that
23 it doesn't move and we also chock cars. We chock cargo so
24 the cargo doesn't move.

25 Q Now, in connection with the work of chocking cars

Andre-direct

A Do use 2x4s, 4x4s, 4x6s, turnbuckles, wire.

A They usually come in 14 foot lengths. Mostly
14 foot.

A I was working on the dock for those two days previous. I was working on the dock. I was supplying the men on the ship with lumber and wires and turnbuckles.

λ νος.

Q Then was that, sir?

A I believe it was the 24th. The foreman said to me, "Joe"--

Q Excuse me. The foreman that you referred to, is that the foreman of New Jersey Export?

A Yes, it is.

Q He sent you aboard the ship?

A He asked me if I would please do him a favor, to
come aboard and please give him a hand to put the wires back on.

1 re20

Andre-direct

2 Q About what time was it that you went aboard the
3 ship on the 24th of November to put the wires back on, as
4 you say?

5 A I'd say between 6:30 and 7:30.

6 Q At what hatch did you go to put wires on?

7 A Four, Five hatch.

8 Q When you talk about putting wires on, what were you
9 attaching wires to at the number 4 and 5 hatch?

10 A Tractors or knock downs that were on deck, cases
11 that were on deck. I don't recall exactly what it was, but
12 I know he asked me to go aboard and put the wires back on
13 for him.

14 Q And did there come a time that evening when you
15 finished putting the wires on on this cargo that was at the
16 number 4 and number 5 hatches?

17 A Excuse me.

18 Q Did there come a time that evening when you
19 finished putting the wires on that deck cargo at the number
20 4 and 5 hatches?

21 A I never finished putting the wires back on at
22 that time.

23 Q Did there come a time when you were sent by your
24 foreman from the number 4 or number 5 hatches to some other
25 place aboard the Huguenot?

1 rc21 Andre-direct

2 A Yes.

3 Q About what time was that?

4 A I'd say about 7:00.

5 Q At about 7:00 where were you sent to work on board
6 the Huguenot?

7 A He asked me to pass some dunnage down to the men
8 working in one of the hatches. I believe it was --

9 Q Was that the number 3 hatch?

10 A I believe it was.

11 Q Did you then go to work at the number 3 hatch at
12 about 7:00?

13 A Yes, sir.

14 Q The wood that you had passed down, where was that
15 located?

16 A That was located on deck.

17 Q Whereabouts on the deck?

18 A I believe it was number 4 hatch.

19 Q Was the pile up there by the carpenters?

20 A No. I think it was ship's lumber that had been
21 on the ship from previous voyages and it was just out on
22 the side.

23 Q Is it customary for the carpenters to have one of
24 their number act as a sawman?

25 A Yes.

1 re22 Andre-direct

2 Q The sawman is the carpenter who is supposed to saw
3 the lengths of lumber into the desired lengths that the
4 carpenters need. is that correct?

5 A Yes.

6 Q Did you have a sawman working with you that
7 evening?

8 A I don't remember if there was a sawman in that
9 particular hatch or not. Sometimes we use handsaws.

10 Q Now, the wood that you were getting came from a
11 point at the number 4 hatch you said.

12 A I believe it was number 4 hatch.

13 Q Was it on the main deck of the number 4 hatch?

14 A Yes, sir.

15 Q Was that on the main deck, on the inshore side side
16 of that hatch?

17 A Yes, sir.

18 Q In connection with the work that you were doing of
19 getting that wood which was on the main deck on the inshore
20 side of the number 4 hatch and getting it down into the upper
21 'tween deck of the number 3 hatch, were you the only car-
22 penter doing that?

23 A Yes, sir.

24 Q Were there any other carpenters working in the
25 number 3 hatch?

1 ra23 Andre-direct

2 A Yes, there were other carpenters working down in
3 the number 3 hatch.

4 Q How many carpenters were working on the deck below
5 in the number 3 hatch?

6 A I would say 3 or 4 carpenters. You know, off and
7 on.

8 Q That kind of work were those men doing?

9 A We were chocking cars.

10 A In order for them to chock the cars it was necessary
11 for you to give them the wood to use: is that right?

12 A They had lumber down there.

13 Q Did they need the wood that you were going to the
14 number 4 hatch to get?

15 A To tie up the cars, yes.

16 Q But they needed that wood to do their work: is that
17 right?

18 A Right.

19 Q And you were getting that wood from the number 4
20 hatch and getting it down to them in the number 3 upper
21 'tween deck so they could continue with their carpentry; is
22 that right?

23 A Yes.

24 Q Where did you position yourself when you were getting
25 that wood down to them at the number 3 hatch?

1 rq24 Andre-direct

2 A At the coaming. The side of the ship where the
3 men were working.

4 Q Was that on the coaming on the inshore side of the
5 ship for the number 3 hatch?

6 A Yes, sir.

7 Q Approximately where along the length of the number
8 3 hatch did you position yourself at the coaming?

9 A I would say midship. Midhatch. Midhatch were
10 they were working.

11 Q About in the middle of the hatch?

12 A Where they were working, yes.

13 0 The number 3 hatch.

14	A	Yes.	Number 3 hatch.
----	---	------	-----------------

15 Q They were working on the deck below on the upper
16 'tween deck level; is that right?

17 A Yes, sir.

18 Q And you were on the main deck level on the inshore
19 side about midway; is that right?

20 A That's right.

21 Q How did you get the wood down to them?

22 A I passed it down. I called down to the carpenters
23 down below --

24 Q Did you pass it down or did you drop it down?

25 A I called to the carpenters below ---

rc25

Andre-direct

Q My question is: Did you pass it down or did you drop it down?

A I dropped it down.

Q How did you go about dropping it down: you lifted it up and threw it over?

A No. The procedure for passing or dropping lumber in the hold is that you call the carpenter down below and he is the one that tells you to drop the lumber because you can't see underneath. In case somebody walks out you can't see them and they are going to get hit, but the man in the hatch is the one that can see if it is clear or will tell the guys to get out of the way, he is going to drop some lumber down and this is the procedure of how you pass lumber or how you drop lumber into a hatch.

Q How long before the accident happened were you standing there doing this work of dropping the lumber down into the deck below?

A I didn't understand that question.

Q An accident happened that night, didn't it?

A Yes, it did.

Q At the number 3 hatch, right?

A Yes.

Q For how long before that accident were you standing at the number 3 hatch on the main deck, midship -- or midway

1 rq26 Andre-direct

2 of the hatch dropping lumber down?

3 A About 10 minutes.

4 Q Each time that you dropped lumber down did you have
5 some conversation with the carpenter on the deck below?

6 A Yes, sir.

7 Q What was the name of the guy you were talking to?

8 A I don't remember the name of the fellow I was
9 talking to. This is, you know, six years ago.

10 Q Did anybody tell you to stand in the particular
11 position that you chose to stand in or was that your decision?

12 A That was my decision.

13 Q Where you stood was in the area over which the
14 cars would be coming in, was it not?

15 A Yes, sir.

16 Q About how high was the coaming over which you had
17 to drop this lumber down?

18 A About five feet.

19 Q By the way, how tall are you, sir?

20 A I am 6'1".

21 Q You are 6'1"?

22 A Yes.

23 Q How did you go about getting this lumber over
24 that five foot coaming to drop it down?

25 A How did I what?

1 rg27

Andre-direct

2 Q How did you go about getting this lumber over the
3 five foot coaming so you could drop it down?

4 THE WITNESS: May I stand up, Your Honor?

5 THE COURT: Go ahead.

6 A When you carry lumber you carry it like this
7 (indicating) and when I came to the coaming, the coaming was
8 similar like this and I rested the lumber on the coaming
9 similar to this and then I called down to the carpenter below
10 -- and then I called down below and he said "okay, drop it"
11 and I dropped it.

12 Q How long were these pieces of lumber that you
13 were dropping down?

14 A I would say between six and eight feet. Six foot.
15 I would say it's about six foot. It is Japanese lumber.

16 Q When you carried them, did you carry them in
17 this vertical position?

18 A No, sir.

19 Q What were the other dimensions of this lumber?
20 You said it was about six feet long. What were the other
21 dimensions?

22 A 1x6s, 1x4s. They are one inch thick, about six
23 inches wide and they are about six foot long.

24 Q How many did you drop down at one time?

25 A Sometimes I dropped three, four down, sometimes
two.

rg23

Andre-direct

1
2 Q So you would have to make continual trips back and
3 forth to where the lumber was located on the inshore side of
4 the main deck at the number 4 hatch, pick up whatever you
5 were going to pick up and bring it over to the number 3 hatch
6 and drop it down; is that what you were doing in that ten
7 minutes?

8 A Yes, sir.

9 Q How would you carry several pieces of that lumber
10 from the place where you picked it up at the number 4 hatch
11 over to where you were going to drop it at the number 3 hatch?

12 A How would I carry it?

13 Q Yes.

14 A Well, the lumber is like this (indicating). You
15 put one hand here and you put one hand here and you walk with
16 it like this.

17 MR. LORY: Indicating horizontally.

18 Q Would you please regain that position for a
19 moment.

20 Then when you reached the five foot high coaming
21 what would you do?

22 A I would rest and call the carpenters because the
23 carpenters were working inside. They were working in one
24 of the lockers inside of the ship. So I would call them out
25 and I would have to wait for them to come out.

1 rg29

Andre-direct

2 Q So you have the lumber now resting on the coaming
3 like this (indicating); is that about right?

4 A Right.

5 Q And you would be trying to talk to a man down
6 below; is that correct?

7 A When he came out and told me it was --

8 Q Excuse me. My question is you would be trying
9 to talk to a man down below; is that correct?

10 A Yes, sir.

11 Q You would be then facing above the coaming looking
12 at him?

13 A Yes, sir.

14 Q And your back would be to the rail of the ship;
15 would it not?

16 A Yes, sir.

17 Q And you would be looking down below?

18 A Yes, sir.

19 Q And you would be having these pieces of lumber in
20 your hands resting on the coaming; is that correct?

21 A Right.

22 Q Then when the man down below says, "okay", what
23 would you do, just shove it over?

24 A No, sir.

25 Q What would you do?

1 rg30

Andre-direct

2 A There is a technique in dropping lumber.

3 Q Just tell us what you did that day.

4 A I took the lumber and I passed it down like this
5 (indicating).

6 Q When you pass it down, that implies that somebody
7 can reach it from down below, doesn't it?

8 THE COURT: Mr. Andre, what you are saying is you
9 held it over the top?

10 THE WITNESS: I held it over like this (indicating).
11 You don't throw anything down in the hatch. You don't throw
12 anything because there is men working down there.

13 THE COURT: Just tell us what you did.

14 THE WITNESS: The man told me to drop the lumber
15 and I dropped the lumber.

16 THE COURT: All right, sit down now.

17 Q When you dropped the lumber it would fall; is that
18 correct?

19 A Yes, sir.

20 Q In other words, what I want to make clear is that
21 when you released the lumber at the end that you are holding,
22 there is no one that has his hands on it at the bottom?

23 A No.

24 Q This was too short for that purpose?

25 A Right.

1 rg31 Andre-direct

2 Q If it were longer lumber it could have been done
3 that way?

4 A Right.

5 Q When you dropped the lumber as you described you
6 are holding it at the upper end on the inboard side of the
7 coaming; is that correct?

8 A Yes, sir.

9 Q Are you standing on deck or are you standing on
10 that ladder to do that?

11 A I don't know if I was standing on the deck or a
12 pipe.

13 Q A pipe?

14 A There were some pipes there. I don't know. By
15 the hatch -- I don't know. It was something, but I would say
16 I was standing on the deck.

17 Q And you have the lumber in your hands; you are
18 holding on the the upper end of it, and approximately how
19 wide is the coaming?

20 A I would say the coaming was about 20 inches, 24
21 inches wide. It was a pretty wide coaming.

22 Q As you were holding the lumber at its upper end
23 on the side -- on the inboard side of that coaming -- and by
24 that I mean the side that's in the square of the hatch; is
25 that right?

1 rg32

Andre-direct

2 A Yes, sir.

3 Q That's inboard.

4 Were you looking down below?

5 A Yes.

6 Q Would you continue looking down below before you
7 dropped that lumber?

8 A Yes.

9 Q Were you interviewed that night by a police officer?

10 A Yes, I was.

11 Q Did you tell him you were involved in an accident
12 to Mr. Iannuzzi?

13 A Yes. I told him I was involved --

14 Q Did you tell him that you dropped lumber on --

15 MR. LORY: May we have the witness complete his
16 answer before we get the next question, if Your Honor, please.

17 A I told him I was involved in an accident.

18 Q Did you know the name of the man who was injured
19 in the accident?

20 A No, I didn't.

21 Q Was there only one accident that happened that
22 night that you know of?

23 A As far as I know of that was the only accident
24 that happened.

25 Q Did you tell the police officer who interviewed

1 rg33 Andre-direct

2 you that a piece of wood had dropped from your hand onto the
3 man who was hurt?

4 A No, sir.

5 Q Did you ever report to any of the ship's personnel
6 that a piece of wood that you had been dropping struck the
7 man?

8 THE COURT: Is there something about the question
9 you don't understand?

10 THE WITNESS: No. It is just that he is -- I said
11 that the wood was knocked out of my hand. Not that I dropped
12 it, it was knocked out of my hand. This is what I said.

13 Q I am sorry, I can't hear you.

14 THE COURT: If the reporter would read back the
15 answer.

16 (answer read)

17 Q Mr. Andre, didn't you give testimony here yesterday
18 afternoon in the absence of the jury?

19 A Yes, I did.

20 Q Do you remember that I asked you some questions
21 and you gave your answers and the reporter typed it up and
22 the Judge was on the bench; every thing was the same as it
23 is now except the jury wasn't present; do you remember that?

24 A Yes.

25 Q Do you remember being asked this question and

1 rg34 Andre-direct

2 giving this answer?

3 MR. LORY: Where are you?

4 MR. COHEN: Page 14, Mr. Lory.

5 Q "Question: Did you, when you were interviewed
6 by the police officer, tell him that a piece of wood
7 that you had dropped had struck the man?

8 "Answer: Yes, I did."

9 Wasn't that your testimony yesterday?

10 A I believe it was.

11 Q Weren't you testifying truthfully yesterday?

12 A Yes, I was.

13 Q When you made that statement to the police officer,
14 that was within a very short time after this accident happened,
15 wasn't it?

16 A Yes, it was.

17 Q That same evening?

18 A Yes.

19 Q Within a matter of minutes or an hour or so?

20 A Yes, sir.

21 Q At that time weren't you telling the police officer
22 the truth as best you saw and knew it?

23 MR. LORY: If Your Honor please, I submit that
24 Mr. Cohen is badgering this witness. The witness has told
25 us what he told the police officer.

1 rg35

Andre-direct

2 THE COURT: I will overrule the objection. Mr.
3 Cohen will perhaps lower the volume of his voice, but the
4 question is proper.

5 Go ahead, sir.

6 MR. COHEN: I am sorry, am I shouting?

7 THE COURT: You were enthusiastic. Let's put it
8 that way.

9 MR. COHEN: I am sorry. I didn't mean it.

10 Q When you made that statement to the police officer
11 within this short period of time following the accident,
12 weren't you telling the police officer the truth as you best
13 knew it and understood it then?

14 MR. LORY: Objection, Your Honor, unless Mr. Cohen
15 clarifies the statement that he made to the police officer.

16 THE COURT: This is what he said he testified to
17 yesterday. Go ahead, I will allow it.

18 You may answer it, sir.

19 MR. COHEN: May I put the whole thing again so
20 we have the whole thing in continuity without the break from
21 the objections.

22 THE COURT: Yes.

23 Mr. Andre, you have said that you did say yesterday
24 when you were interviewed by the police officer that you told
25 him that a piece of wood that you had dropped struck that

1 rg36 Andre-direct

2 man and you said yes.

3 THE WITNESS: Yes.

4 THE COURT: Now the question is were you telling
5 the truth as best you knew it at the time you made that
6 statement to the police officer.

7 THE WITNESS: Yes, I was.

8 Q Mr. Andre, do you remember yesterday afternoon I
9 also asked you this question and you gave this answer:

10 "Question: Did you report to one of the ship's
11 personnel that a piece of wood that you had been dropping
12 struck that man?

13 "Answer: Yes, I did.

14 Wasn't that your testimony yesterday from the
15 witness stand?

16 A Yes, sir.

17 Q Was that true yesterday?

18 A Yes, sir.

19 Q Were you telling the truth yesterday?

20 A Yes. I am telling the truth today, too.

21 Q When you made that statement to one of the ship's
22 personnel, was that also a statement you made within a
23 relatively short time after this accident happened?

24 A I believe it was.

25 Q Were you telling that ship's man the truth when you

1 rg37 Andre-direct

2 told him that?

3 Were you speaking truthfully when you made that
4 statement to the ship's man?

5 A What was the statement I was supposed to have made
6 to the ship's man?

7 Q I will read it to you.

8 THE COURT: That the piece of wood you had been
9 dropping struck that man.

10 Mr. Andre, let me say it again. You were asked
11 yesterday, "did you report to one of the ship's personnel that
12 a piece of wood that you had been dropping struck that man?"
13 and you answer was, "yes, I did."

14 THE WITNESS: Yes.

15 THE COURT: You said you do recall giving that
16 answer yesterday and that it was true.

17 THE WITNESS: Yes, Your Honor.

18 THE COURT: Mr. Cohen's question to you is was that
19 a truthful statement that you made to the ship's personnel at
20 that time.

21 THE WITNESS: Yes, Your Honor.

22 Q Did you, Mr. Andre, go to the hospital?

23 A Yes, I did.

24 Q Did you go in the ambulance with the man who was
25 hurt?

1 rg38

Andre-direct

2 A No, I didn't.

3 Q How did you get there?

4 A I believe I walked to the hospital. I am not sure.
5 You know, I don't remember if I walked -- I don't think I went
6 in the ambulance, though.

7 Q Could you tell us for that reason you went to the
8 hospital?

9 A Well, the man was injured and I felt very -- I had
10 never seen anything like this happen before, you know, and
11 I had felt that I was responsible for this and I felt that
12 if I could tell the doctors what had happened to the man,
13 that if they knew that it was damage that hit the man and
14 he needed an operation and this would have been helpful for
15 them if he needed an operation to tell them exactly what it was
16 that hit him in the head, or if he needed any blood, I was
17 more than willing to do anything I possibly could to help
18 this man, you know, informationwise or bloodwise or anything
19 like that.

20 Q I understand. Thank you very much.

21 Excuse me, I have one more thing.

22 You came to Court because I served you with a
23 subpoena; isn't that true?

24 A Yes.

25 Q After I served you with the subpoena for a day

1 rg38A

Andre-direct

2 last week His Honor at my request has been ordering you to
3 come back each day until we could reach you, is that correct?

4 A Yes, sir.

5 MR. COHEN: I have nothing further.
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1 Gpa 163

Andre-cross

2 CROSS EXAMINATION

3 BY MR. LORY:

4 Q Mr. Andre, did you tell us before that
5 immediately following the accident that you did not know
6 who the victim of the accident was?

7 A Yes, sir.

8 MR. COHEN: By name, is that what you mean,
9 sir?

10 MR. LORY: By name.

11 By name or by person. I will let the question
12 stand as it is.

13 Q Did you know at the time the accident
14 happened who the victim of the accident was?

15 A No, sir.

16 Q Did you know who the victim of the
17 accident was when you spoke to the police officer?

18 A No, sir.

19 Q Did you know who the victim of the accident
20 was when you spoke to the boatswain?

21 A No, sir.

22 Q When for the first time did you learn the
23 identity of the victim?

24 A In the hospital.

25 Q At that time you learned that it was

1 Gpa 164

Andre-cross

2 Mr. Iannuzzi?

3 A Yes.

4 Q While you were engaged in the performance of
5 your job duties as a carpenter and just before this
6 accident happened where was Mr. Iannuzzi -- by the way,
7 did you know Mr. Iannuzzi?

8 A I didn't know him personally. I knew he
9 was the ship's foreman. He was the stevedore on the
10 ship. He was in charge of all the gangs.

11 Q Did you know him by sight?

12 A Yes.

13 Q Did you recognize him?

14 A Yes.

15 Q On November 24, 1968 were you able to
16 recognize him on sight?

17 A Yes, sir.

18 Q Just before this accident happened, did
19 you have occasion to see Mr. Iannuzzi?

20 A Yes, sir.

21 Q Where was Mr. Iannuzzi just before this
22 accident happened when you last saw him?

23 A He was standing by the hatch.

24 Q At what deck level?

25 A I believe it was number 3 hatch.

Gpa 165

1 Q At the same deck level that you were at?

2 A Yes, sir.

3 Q That would be the main deck of the vessel?

4 A Yes, sir.

5 Q When you spoke to the police officer, did you
6 tell that police officer that the piece of dunnage was
7 knocked from your hand?
8

9 A Yes, I believe I did tell him that.

10 MR. COHEN: If your Honor please, that's
11 a leading question.

12 MR. LORY: He is not my witness, your Honor,
13 and he has also testified to your Honor earlier that it
14 was knocked from his hand.

15 MR. COHEN: There was no such testimony in
16 the transcript given yesterday or today.

17 THE COURT: I will allow the question.

18 Q Did you report to the police officer --

19 THE COURT: Could I have the question and
20 answer read back, please, Mr. Greenspan?

21 (Record read.)

22 Q At the time that you spoke to the police
23 officer, was it your belief that this piece of
24 lumber had struck someone down below?

25 A Yes, it was.

1
2 Q And did you retain that belief when you
3 spoke to the boatswain?

4 A Yes, I did.

5 Q I believe you told us that you first discovered
6 the identity of the victim while at the hospital?

7 A Yes, sir.

8 Q Would it be fair to say, Mr. Andre, that
9 if Mr. Iannuzzi was on the main deck, the same deck level
10 that you were, that you could not have dropped this
11 lumber on Mr. Iannuzzi?

12 THE COURT: I sustain the objection.

13 Q Did you tell Mr. Cohen yesterday that
14 immediately following the accident that you did not know
15 who was hurt down below?

16 A Yes, I did.

17 Q Just before the accident happened was cargo
18 being brought aboard the vessel?

19 A Yes, it was.

20 Q At that particular time which way were you
21 facing?

22 A Well, I was going back and forth passing the
23 lumber down in the hatch.

24 Q Did this car that came aboard have
25 anything to do with the accident, to your knowledge?

Gpa 167

A Yes, it did.

Q What effect did it have or what did it have to do with the accident?

THE WITNESS: May I stand up, your Honor?

THE COURT: Sure.

A I was passing this dunnage down -- the dunnage was about this much over my head (indicating.)

MR. COHEN: May we have the record indicate how much over his head, your Honor?

THE COURT: Yes. About two, two and a half feet?

THE WITNESS: Two, two and a half feet. 30 inches, two, two and a half feet.

A Well, you see -- let me explain this to you. I was bending over. Now, it wasn't that the dunnage wasn't over my head, it was just that I was in a position like this (indicating.) Normally if I was standing up it would have been the same level as I would have been, but here I am bending over passing this dunnage down. I was waiting for them to tell me to drop it down below. All of a sudden something opened up my hand (indicating) like this, and the dunnage just went out of my hands and I knew whatever it was was right on top of me and I could sense danger and I couldn't catch to

1 see what it was out of the corner of my eye. I couldn't
2 see what it was, so I knelt down and I ran away because
3 I thought whatever it was was going to come down and
4 hit me.
5

6 I ran about 15 feet on my knees. I
7 stood close to the coaming because if it would have come
8 down it would have hit the coaming. When I got back
9 up I started walked back towards the hatch to see what
10 would happen and all the longshoremen down there
11 were screaming; you know, screaming in Italian and I
12 could see there was a man hurt down there and the condition
13 of the hatch boss that was in the hatch, he was in bad
14 shape. Whatever happened down there, it was very
15 serious and the men were all screaming; I couldn't
16 understand what they were saying, so because the dunnage
17 was knocked out of my hand I naturally figured that the
18 dunnage had hit one of the men that was working in the
19 hold.

20 Q Immediately following the accident did you
21 report to the police officer that the dunnage
22 had been knocked out of your hand?

23 A Yes.

24 Q Mr. Andre, you told us that you had been
25 a ship's carpenter for a number of years; isn't that so?

Gpa 169

Andre-cross

1

2

A Yes, sir.

3

Q As the ship's carpenter you would be

4

compelled on occasion to work on board the ships --

5

A Yes, sir.

6

Q And down in the hatches?

7

A Yes, sir.

8

Q While cargo operations were still in progress?

9

A Yes, sir.

10

Q That would be to chock up cargo that's already

11

there while other cargo is coming in?

12

A Yes, sir.

13

Q On these occasions, does your work compel

14

you to be and remain in the plane of the draft?

15

Do you know what I mean by the plane of the

16

draft?

17

MR. COHEN: Objection, if your Honor please.

18

THE COURT: Why?

19

MR. COHEN: What the circumstances may

20

have been when he was working on other days on other

21

ships --

22

THE COURT: But he asked him what the plane

23

of the draft was. That was the question to which you

24

objected.

25

MR. COHEN: I am sorry, there was a much longer

question than that.

THE COURT: IT was answered, I assume.

MR. COHEN: Is that withdrawn?

THE COURT: Read it back.

MR. LORY: Let me withdraw it and start again, thereby making it easier for everybody.

Q Do you understand what I mean if I use the expression plane of the draft, Mr. Andre?

A No, I don't.

Q Will you accept this as a definition of plane of the draft as has been given here, that the draft will pass over the deck of the vessel in a given line by reason of the positioning of the booms?

A Yes.

Q As far as the model is concerned, the way we have it, it would move in this particular plane.

A Yes.

Q Now, Mr. Andre, have you had experience wherein the performance of your job duties you were compelled to stay and remain in the plane of the draft?

MR. COHEN: I object to that.

THE COURT: I will sustain it, yes.

Q Are you familiar with the custom and practice with respect to chocking cargo in the Port of New York in

1 Gpa 171

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9:5

2 conjunction with the longshoring activities?

3 A No, sir.

4 MR. LORY: I have nothing further of this
5 witness.

6 THE COURT: Mr. Kain?

MR. KAIN: No questions, your Honor.

7 REDIRECT EXAMINATION

8 BY MR. COHEN:

9 Q Mr. Andre, you came to Court for the first
10 time in this case sometime last week; is that correct?

11 A Yes.

12 Q At any time before coming to Court did you
13 meet with Mr. Lory?

14 A Yes, I did.

15 Q When did you meet with Mr. Lory before
16 coming to Court?

17 A I believe Valentine's day.

18 Q Valentine's day of this year?

19 A Yes, sir.

20 Q That would be this February 14th?

21 A Something like that. I don't remember.

22 Q Where did you meet with Mr. Lory on
23 Valentine's day?

24 A In Wetson's.

25 Q Wetson's?

A Wetson's.

Q What's Wetson's?

A Wetson's is a hamburger place.

Q Where was this Wetson's that you met with Mr. Lory on Valentine's day?

A Bay Parkway and 86th Street.

Q Was that the first time that you had ever met with Mr. Lory?

A Yes, sir.

Q Who set up this meeting between you and Mr. Lory?

A Mr. Lory called me up and said he would like to meet with me.

Q So that Mr. Lory knew of you; is that correct?

A Yes, sir.

Q And he called you to meet with you; is that right?

A Yes, sir.

Q The two of you selected this Wetson's place; is that right?

A No. I selected it.

Q When you met with Mr. Lory, did he know about your involvement in this accident?

A When I met Mr. Lory he said to me, "Joe, I

1 would like for you to explain to me and tell me the
2 truth of what happened on this particular day."

3 Q Did he know that you were involved in this
4 accident in some fashion when he first met you?

5 A I assume he did.

6 Q It was no surprise to him, was it?

7 A I don't think so.

8 Q You, of course, told him that there were
9 carpenters working in the deck below and you were on
10 the main deck; is that right?

11 A Yes, sir.

12 Q So he knew that full well, did he not, from
13 what you had told him?

14 A Yes, sir.

15 Q When you met with Mr. Lory, was anyone else
16 present with you?

17 A No, sir.

18 Q Just the two of you alone at Wetson's?

19 A Yes, sir.

20 Q Did you ask Mr. Lory how he had known that
21 you were involved in this matter before he called you for
22 that meeting?

23 A No, I didn't ask him.

24 Q Did you ever meet with any other person
25

representing the plaintiff in this case, aside from Mr. Lory?

A I don't follow the question.

Q Did you ever meet with a lawyer named Gritz?

A When, sir?

Q Any time.

A Yes. Once I did, sir.

Q When was that?

A That was yesterday, sir.

Q Yesterday?

A Yes, sir.

Q When did you meet with Mr. Gritz yesterday?

A I didn't meet with Mr. Gritz personally. I just seen Mr. Gritz in his office yesterday.

Q You were in Mr. Gritz' office yesterday?

A Yes, sir.

Q Was that before or after you gave that testimony in Court yesterday?

A It was after I gave that testimony in Court yesterday.

Q So you testified in Court yesterday afternoon and then you went to Mr. Gritz' office?

A Yes, sir.

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Q Now, Mr. Gritz and Mr. Lory never asked you to come to Court to testify, did they?

A No, sir.

Q I subpoenaed you here; is that right?

A Yes, sir.

Q What did you do in Mr. Gritz' office yesterday?

A I told Mr. Lory --

Q What did you do there? Did you go there to talk or to do something?

A To talk.

Q Did you go there to talk about this case?

A Yes, sir, I did.

Q Who told you to go to Mr. Gritz' office to talk about this case yesterday after you testified in Court?

A Nobody.

Q Nobody?

A Nobody.

Q How did you know where Mr. Gritz' office is or who he was?

A I looked in the telephone book and I found out where his office was and I went to his office.

Q How did you know to look for a Mr. Gritz?

You never met him before, isn't that true?

A I didn't go to see Mr. Gritz, I went to see --

Q I didn't ask you that. I asked you how
did you know to look in the telephone book for a
Mr. Gritz.

A Because I knew the firm that -- Mr. Lory is
represented by Gritz.

Q Mr. Lory is represented by Mr. Gritz?

A It's the same concern.

Q How did you know that?

A Because I know Mr. Lory works with
Mr. Gritz.

Q You only met Mr. Lory once and that was at
Wetson's on Valentine's day of this year; is that right?

A Yes, sir.

Q How did you learn about Mr. Gritz?

A Because Mr. Lory tells me he works with
Mr. Gritz.

Q Did he tell you Mr. Gritz' first name?

A No, he didn't.

Q Do you know Mr. Gritz' first name?

A No, I don't.

Q Did you know where his office was located?

A I looked in the telephone book.

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Q You looked for a man named Gritz?

A No, sir.

Q Did you know which phone book to look in?

A Brooklyn.

Q You looked for a lawyer named Gritz in
Brooklyn?

A Yes, sir.

Q Did you look in the classified or the
regular pages?

A I looked in the regular pages, I believe.

Q You telephoned --

A No, I didn't telephone.

Q Before you went.

A No, I --

Q Did you telephone before you went?

A No, I didn't.

Q So you just looked in the phone book to see
the address of the office; is that correct?

A No. Downstairs --

Q My question is did you just look in the phone
book to find the address?

A No. I didn't find the address in the book.

Q You looked in the phone book?

A Yes.

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Q And you couldn't find the address?

A Right.

Q Did you ask Mr. Lory what his office address was?

A No, I didn't.

Q After you looked in the phone book to find Mr. Gritz' office address and couldn't find it, what did you then do?

A I asked this gentleman over here (indicating) if he could give me the address to Mr. Gritz' office or Mr. Lory's office.

Q And you received the address to Mr. Gritz' office?

A Yes, sir, I did.

Q This was all on your own idea to go there; is that correct?

A Yes, sir.

Q At what time of the day was this?

A After I left Court here yesterday.

Q Tell us what time that was.

A 4:30, a quarter to five.

Q Did you go to Mr. Gritz' office alone?

A Yes, I did.

Q Did you see Mr. Gritz?

1
2 A No, I seen -- I seen Mr. Gritz in the office
3 and he said hello. You know, it was just a very casual
4 thing. I went there to speak to Mr. Lory.

5 Q Was anybody else there?

6 A Was anybody else where?

7 Q When you spoke to Mr. Lory, was there anybody
8 else with you?

9 A In the office?

10 Q Wherever it was that you spoke to him.

11 A No, it was just Mr. Lory and I.

12 Q Was there anybody else there?

13 A Mr. Gritz was there and another man was
14 there. I guess another attorney were there. I don't
15 know. They weren't in the same room with me.

16 Q In the room that you were in with Mr. Lory,
17 was it just the two of you alone together?

18 A Yes, sir.

19 Q Now, I thought that when I was asking you
20 questions earlier this morning that you had said that
21 when you were dropping this wood down you were holding
22 it at the upper end and you would let it go so it would
23 fall down to the deck below; is that right?

24 A Yes.

25 THE COURT: That was in response to a question

of mine, Mr. Cohen.

MR. COHEN: I think your Honor is right.

Q When you hold the wood at the upper end, even if you are bent over there is nothing that is above your head, is there?

Could you answer my question, please, yes or no.

A No. Well, I had the wood in the middle.

Q Oh, you had the wood in the middle, you weren't holding it?

A I got the wood in the middle. I got two hands on the wood in the middle and I put the wood down like this (indicating). The wood is this big (indicating), six foot big. I got two hands on it in the middle and when the man tells me to drop it I drop it.

Q So when you are holding the wood in the middle that is about six foot big, there is about three foot of wood sticking above?

A No, I would say two foot. This is what I said before.

Q I thought you said you were holding it in the middle.

A I got one hand here and one hand here.
(Indicating.)

Q Yes, and you were looking over, right?

1 A I got two feet from this hand down and I
2
3 got two feet from this hand up and I got two feet in the
4 middle here (indicating). I got two feet in between my
5 hands here, I got two feet on top and I got two feet
6 on the bottom, which gives me six feet.

7 Q How many pieces were you holding at the
8 time of the accident?

9 A Maybe a couple of pieces. Maybe one, two,
10 three pieces, four pieces, I don't know.

11 Q The hatch, according to measurements,
12 is not five feet, it's four feet two inches high; the
13 coaming. Do you accept that?

14 A If you say so.

15 Q That's what's been divulged.
16 You were sort of bent over looking below;
17 is that correct?

18 A Yes.

19 Q And a couple of feet of this wood was above
20 your head; is that right?

21 A Yes, sir.

22 Q Now, before you positioned yourself and that
23 wood in that position did you take care to see that no
24 draft was coming across?

25 A When I got --

Q Would you answer my question, please, yes or no.

A I didn't see any draft coming in.

Q My question was before you positioned yourself and the wood in that place, did you check to see that no draft was coming across?

A I didn't see any draft coming across.

Q My question is did you check to see if there was a draft coming across.

MR. LORY: Objection, your Honor. I think the witness has answered.

THE COURT: I will allow it.

Did you check to see it?

THE WITNESS: Well, you -- all right. When you work on a ship, you know, you have to have extra senses about you. When you are there, if you see something that looks heavy over your head you don't stand there. If there is something that doesn't look right, you get out of your way. Did I check? This is my job. You know what I mean, like when you go back and forth, you always have a sense about you. You know, you must have a sense about you. If you see something that don't look right, you get out of the way.

I probably did check -- you know, when I was coming back and forth I probably didn't see anything coming

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2 over, so I went about my business to pass the lumber down.

3 MR. COHEN: I move to strike the probablies,
4 your Honor.

5 THE COURT: All right. strike it out.

6 Q Let me ask you this. Before you turned
7 your back to the rail and started looking over the
8 coaming holding the lumber as you described, waiting to
9 get some signal from one of your other carpenters down
10 below, before you put your body and the wood in that
11 position did you check to see that no draft was coming
12 over?

13 A I didn't see any draft was coming over.

14 Q Did you look to see if one was coming?

15 A I probably did. Probably -- you know, when
16 you are crossing the street, do you see if any cars are
17 coming? You know, it's the same thing. You know, on a
18 job you have to feel -- see what's going on around you.
19 It's an automatic instinct.

20 Q Was there any cargo still on the deck at the
21 number 3 hatch on the inshore side?

22 A I believe there was tractors and a couple of
23 big cases -- or cases on deck.

24 Q At the number 3 hatch there were a couple of
25 cases on deck?

1 A Tractors -- I think there was a couple of
2
3 tractors on deck and a couple of cases up further.

4 Q Was there any reason why you couldn't pass
5
6 this dunnage down from the offshore side where the
7
8 draft doesn't pass over?

9 MR. LORY: Objection, your Honor. We are
10 here to elicit facts, not conclusions or alternatives or
11 anything else.

12 THE COURT: I will sustain the objection on
13 the grounds of form.

14 Q Was it available for you to pass the lumber
15 down from the offshore side of the hatch?

16 A No. The lumber was on the inshore side of
17 the hatch.

18 Q Couldn't you have walked it over to the
19 offshore side and dropped it down on the offshore side
20 so that you wouldn't be under the plane of the falls?

21 A It's nothing to work under the whip. It's
22 called a whip under there. I mean, this is -- for --
23 longshoremen to work under the whip is nothing, you know.
24 It's just to go from one side of the ship to the other --
25 it's like a pain in the neck to go from one side of the
 ship to the other, so the lumber was here, I carried
 it here and I pass it down (indicating). Then I went back

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2 and I got more and I pass it down.

3 Q Is it fair to say from what you just testified
4 that you don't consider it dangerous to work under the
5 plane of the falls?

6 A I consider it part of my job. You know, this
7 is --

8 Q Now, Mr. Andre, approximately how long was
9 that coaming fore and aft?

10 A Maybe 40 feet.

11 Q Was there anything that prevented you from
12 standing at the forward corner on the inshore side and
13 getting the lumber down from that position?

14 A I think there was cargo in one part of the
15 hatch.

16 Q Was there a clear space along the length
17 of the coaming?

18 A What do you mean by a clear space?

19 Q Wasn't there at least a space of a couple of
20 feet alongside the coaming, its entire length, in which
21 there was no cargo stowed?

22 MR. LORY: Objection, your Honor. This is
23 all immaterial.

24 THE COURT: If he knows he can answer.

25 A Half the hatch was loaded.

1 Q That's inside.

2
3 Mr. Andre, would you stay with my question,
4 please. I am talking on the main deck --

5 A Oh, you are talking of the main deck now, okay.

6 Q That's where you were standing, right?

7 A Right.

8 Q On the main deck alongside the entire length
9 of the coaming, wasn't there an open space of at least
10 a couple of feet for people to walk back and forth?

11 A Yes, sir.

12 Q Was there anything that would have prevented
13 you from walking further to the corner on the forward
14 end and dropping the wood down from that point?

15 MR. LORY: Objection, your Honor. Again,
16 it's immaterial.

17 THE COURT: Yes, I will sustain the objection
18 to that question.

19 MR. COHEN: I don't understand the grounds.

20 THE COURT: He said the space was clear so
21 obviously he could have walked forward. The answer is he
22 didn't. You have established that there was no
23 physical impediment.

24 MR. COHEN: I see.

25 Q Was there some reason, then, Mr. Andre, in

1 view of that clear space along the length of the coaming
2 that you chose to stand in the middle under the plane of
3 the falls rather than choosing to stand at one corner or
4 the other corner so that you would not be under the plane
5 of the falls?
6

7 MR. LORY: Objection. It calls for a conclusion
8 of the witness.

9 THE COURT: No, I will overrule that objection.
10 Go ahead.

11 He was asked to state why he picked where he
12 was working.

13 MR. LORY: This calls for an operation of the
14 mind at the particular time. He already told the Court
15 what he did, your Honor.

16 A I just happened to pick that particular
17 position. You know, that was the position I picked.

18 MR. COHEN: I have no further questions.

19 MR. LORY: I have just a couple, your Honor.

20 RECROSS EXAMINATION

21 BY MR. LORY:

22 Q Mr. Andre, when we met in Wetson's, did you
23 tell me in fact just what --

24 MR. COHEN: I am going to object to the form
25 of the question even before he says it. He is not going

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1 to give the testimony, your Honor, not at least without
2 my objecting.
3

4 THE COURT: Are you going to get into conversation
5 between the two of you?

6 MR. LORY: No.

7 MR. COHEN: He just started off, "Did you tell
8 me."

9 Q Did you tell me the facts --

10 MR. LORY: Can I finish the question?

11 THE COURT: Come to the side bar, will you?

12 (At the side bar.)

13 THE COURT: Go ahead.

14 MR. LORY: All I was to elicit at this
15 particular point is that which he testified to today he
16 told me at Wetson's, period.

17 MR. COHEN: That's immaterial.

18 THE COURT: How is that relevant?

19 MR. LORY: With respect to the cross
20 examination conducted by Mr. Cohen to impune and to cast
21 dispersion as to my meetings with this witness, etc., etc.,
22 etc.

23 THE COURT: Mr. Cohen I assume asked him these
24 questions for the purpose --

25 MR. LORY: Of showing favor.

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1 THE COURT: Of showing --

2
3 MR. COHEN: That he was aware of this
4 situation before he opened to this jury and not in his
5 opening nor in his entire presentation of the case
6 did he make reference to the fact that there were
7 carpenters working in the hatch dropping lumber down.
8 He was aware of it and I intend to argue this on my
9 summation as well.

10 MR. LORY: If your Honor please, Mr. Cohen
11 is drawing a conclusion based upon certain facts which
12 are not in my presentation.

13 THE COURT: Mr. Cohen, I don't think
14 Mr. Lory is bound to credit one side or another. You
15 can argue the fact that there is evidence showing to the
16 contrary, but I don't think Mr. Lory is bound to --

17 MR. COHEN: But I have a right to comment
18 upon the presentation of the case, including witnesses
19 that denied to us that there were longshoremen working
20 in the hatch, such as the hatch boss, who said they were
21 all gone away before.

22 THE COURT: I still don't see on what issue
23 it's relevant for you to testify as to what you and this
24 witness talked about in a hamburger stand.

25 MR. LORY: All right, I will leave it, Judge.

1
2 MR. KAIN: If your Honor please, before I put
3 my foot into it --

4 THE COURT: I have been trying to keep my
5 foot out of the swell here.

6 MR. KAIN: As I understood it correctly, this
7 witness was asked did he tell the police officer that the
8 lumber was knocked out of his hand and he responded in
9 the affirmative.

10 THE COURT: That is correct.

11 MR. KAIN: I do not believe he was asked
12 whether he told the boatswain or the ship's personnel
13 that the lumber was knocked out of his hand, and if he
14 has -- and I would like to read in Boatswain Matthee's
15 testimony on it.

16 MR. COHEN: My recollection is the same as
17 Mr. Kain's. Mr. Lory asked him about that with regard to
18 the police officer, but did not ask him that question
19 relating to the boatswain.

20 THE COURT: My notes show, and they are not
21 always the most reliable because they are a characterization
22 from me. My notes show that he asked him whether he
23 maintained that belief when he spoke to the boatswain,
24 which was that the dunnage had been knocked from his hand.
25 If there is any question about it, Mr. Greenspan can read

1
2 it back to us.

3 MR. COHEN: In that terminology you are right.

4 THE COURT: Which I would assume to be --

5 MR. KAIN: May the question be re-asked and
6 if the witness denies it, may this testimony be read,
7 the boatswain's testimony?

8 THE COURT: Absolutely.

9 Why don't you put the question again. Ask
10 him what he claims he told the boatswain.

11 MR. LORY: I will not inquire, but you are
12 at liberty to inquire.

13 MR. KAIN: I am not suggesting that you
14 inquire.

15 MR. COHEN: I think we have a right at this
16 point to read the boatswain's testimony if it wasn't read
17 before.

18 THE COURT: I do, as a matter of fact, as
19 well. I remarked that when Mr. Lory asked about what
20 was told the officer, that I felt that that had opened
21 the door to the officer's testimony.

22 MR. COHEN: Right.

23 THE COURT: I made that statement on the
24 record. Now, whether the door has been opened quite as
25 wide to the boatswain is a matter of conjecture, but I

1 think it has. Perhaps we ought to have the question
2 and answer read back.
3

4 MR. COHEN: You have the question and
5 answer down accurately.
6

7 THE COURT: No, I wrote down that he maintained
8 that belief when he spoke to the boatswain.

9 MR. COHEN: That was his language.

10 MR. LORY: If I remember correctly, it
11 was with respect to the identity of the victim. Wasn't
12 I inquiring as to the identity of the victim at that
13 particular time when you spoke to the --

14 THE COURT: Let's everybody stop. See if we
15 can find that question and answer.

16 off the record.

17 (Discussion off the record.)

18 MR. COHEN: Do I have the right at this juncture
19 to read in the rest of the boatswain's deposition
20 testimony?

21 MR. LORY: If your Honor please, there is
22 nothing inconsistent. There is no contradiction.

23 THE COURT: I think that there is -- it's
24 unclear from this man's testimony as to what he told
25 the boatswain and I think if you establish that there
is a contradiction, then it opens the door to the

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boatswain's testimony.

MR. COHEN: That lack of clarity was raised by the manner in which Mr. Lory phrased his question.

THE COURT: All right.

MR. COHEN: If he wants to clear it up himself he can, but he raised it and he can't raise it in a fashion which he then says later is unclear.

THE COURT: All right, I will allow you to read the boatswain's testimony.

MR. LORY: Note an exception on the record for whatever it's worth.

(In open court.)

MR. LORY: At this point I will refrain from further questions, Judge.

THE COURT: Any further questions?

MR. COHEN: No, sir.

MR. KAIN: No, sir.

THE COURT: You may step down, sir.

Mr. Andre is excused by all counsel, I take it?

MR. COHEN: Yes sir.

MR. LORY: Yes, sir.

MR. KAIN: Yes, sir.

(Witness excused.)

